
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FOUR

Civ. No. B 069450
(Super. Ct. No. BC 052395)

CHURCH OF SCIENTOLOGY INTENTIONAL,

Plaintiff-Respondent

-vs-

GERALD ARMSTRONG,

Defendant-Appellant.

On Appeal From Superior Court Of The State Of California
County of Los Angeles
The Honorable Ronald M. Sohigian

APPELLANT'S APPENDIX IN LIEU OF CLERK'S TRANSCRIPT, VOLUME VII

1594-1743

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COPY

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8:30 a.m.

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1 PROCEEDINGS BEGIN AT 8:30 A.M.

2 (Court is Called to Order)

3 THE COURT: All right, we're back on the record in
4 Scientology against Armstrong, BC-052395. The attorneys who
5 were before the Court before the recess at the conclusion of
6 yesterday's proceedings are before the Court again, each at
7 counsel table. And of course that includes Mr. Berry who
8 didn't sign in yesterday but who was here during most of the
9 proceedings and is here now.

10 What I intend to have you do now is to make your
11 arguments based on the evidence in the record. I intend to
12 have the plaintiff open and close. And I intend to have the
13 defendant argue by way of opposition. Any objection to that
14 procedure?

15 MR. WILSON: No, Your Honor.

16 THE COURT: How about you, counsel. Any objection?

17 MR. GREENE: No. No, Your Honor.

18 THE COURT: Okay.

19 MR. WILSON: I have one question.

20 THE COURT: Sure.

21 MR. WILSON: Should I reserve part of the ten
22 minutes you've allotted me for the close?

23 THE COURT: Yes. What I'm going to do is this. I'm
24 going to deviate from two orders that I made yesterday, or
25 management points that I made yesterday. The first is this.

26 I think that it will not be necessary for me to have
27 you back again on the order to show cause, the thing that you
28 were having problems on. Going through the evidence last

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1 night gives me the feeling that it would probably not be
2 fruitful to conduct such a proceeding. And this morning.
3 That's number one.

4 Number two; I'm going to give you more than the --
5 pardon me -- more than the period of -- would you pardon me
6 for a second. Let me see if I can take an allergy pill.
7 Pardon me. I'll do that in just a second. I'm going to give
8 you more than the time that I had indicated so that to the
9 extent that that additional time is of assistance to you you
10 can utilize it.

11 I had had -- my exclusive concern is my commitment
12 to other cases and to the interests of other litigants, all of
13 which I have to watch out for. There has been sort of a
14 double switch in my scheduling. I'm not going to be with you
15 this afternoon, as you know. And one of the other matters
16 that was of pressing significance will be one that I won't
17 have to devote as much time to as I had thought.

18 If you'll wait for just a second, I'll be right
19 back.

20 (Pause)

21 THE COURT: Is someone wearing cologne or perfume of
22 any kind?

23 MR. WILSON: Not me.

24 THE COURT: Down here at this end of the table?

25 MR. GREENE: Yes. Some aftershave.

26 THE COURT: What's the brand.

27 MR. GREENE: Chanel.

28 THE COURT: Okay.

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1 MR. GREENE: Not accustomed to such an intimate
2 question.

3 (Laughing)

4 THE COURT: Well, I don't miss a thing.

5 MR. GREENE: I recognize that.

6 THE COURT: It's very -- you know, you can wear
7 whatever you want. It's just that that creates an allergy
8 problem with me. How much time do you suggest for argument,
9 counsel?

10 MR. WILSON: Your Honor, I think if I had ten, at
11 the most fifteen minutes for an opening, and maybe five or ten
12 for close, that would be more than adequate.

13 THE COURT: How about you, counsel?

14 MR. GREENE: A total commensurate amount of time.

15 THE COURT: Fifteen minutes total?

16 MR. GREENE: No, twenty-five minutes total.

17 THE COURT: All right, you want to change your
18 position then?

19 MR. WILSON: I seriously doubt I'll be more than
20 twenty minutes but if --

21 THE COURT: Okay, here's what we'll do.

22 MR. WILSON: -- Mr. Greene needs --

23 THE COURT: I'll give each of you twenty-five
24 minutes. You can divide the time up any way you want. We'll
25 visualize that you have begun at seventeen minutes to 9:00.
26 Go right ahead.

27 MR. WILSON: Okay. One preliminary matter and I
28 don't mind if it counts against the time.

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1 When I started yesterday I did say that I might want
2 to offer some rebuttal evidence. I have two declarations. I
3 will only want to offer portions of those declarations. I've
4 previously asked Mr. Greene if had an objection and he said he
5 did. May I present, proffer those -- that evidence?

6 THE COURT: You said that -- yes, you can proffer
7 them. I'm -- go ahead.

8 MR. WILSON: The first is, they're both in a volume
9 entitled Exhibits in Support of Plaintiff's Reply to
10 Defendant's Opposition to Motion for Preliminary Injunction
11 and Reply to Amicus Brief of Joseph Yanny.

12 First is the declaration of Ms. Laurie Bartilson.
13 And I would proffer the introductory paragraph which states
14 who she is and the foundation.

15 And the second -- well, the second paragraph is
16 necessary; it merely attaches a foreign authority that we're
17 relying on.

18 The third paragraph attaches a transcript of
19 proceedings in this case before Judge Geernaert dated April
20 28, 1982 -- 1992, excuse me, as Exhibit B.

21 And the sixth paragraph, which is on page 2, lines 7
22 to 18, which basically lists that person with -- who are
23 subject to similar restrictions imposed upon Armstrong by the
24 agreement have testified pursuant to subpoena. That's --
25 that's from the Bartilson declaration.

26 THE COURT: Yes.

27 MR. WILSON: Then --

28 THE COURT: Just a second. Counsel?

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1 MR. GREENE: Your Honor, I object to that on the
2 following bases.

3 One, and most importantly, yesterday was the time
4 for the evidentiary phase of this proceeding. If there was
5 any rebuttal evidence to be submitted by the plaintiff
6 yesterday was the time to do that so the Court could rule on
7 it. And then depending on whatever the Court's ruling would
8 be, the parties could rely on that ruling for the preparation
9 of their arguments. That of course is what I've done. I
10 didn't even conceive that there would be something like this,
11 so rather than bring the dolly-load worth of documents here
12 again today, I brought a single briefcase. I --

13 THE COURT: You mean, you'd have to do something to
14 respond to the content of the proceedings of the 28th of April
15 before Judge Geernaert?

16 MR. GREENE: Yes.

17 THE COURT: Why?

18 MR. GREENE: What would I -- I'd have to look and
19 review those proceedings and incorporate into my argument
20 whatever points would logically flow from those proceedings.
21 And it's simply not fair, now at the eleventh-and-half hour
22 for counsel to say, oh Your Honor I forgot, and by the way
23 we'd like to proffer this rebuttal evidence, after the
24 exhaustive proceeding that we went through yesterday and after
25 the Court graciously gave us the time last night and this
26 morning to review and to prepare. And it's simply not fair.

27 And the -- counsel has had this material. And if
28 counsel wanted to submit it in rebuttal a submission should

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1 have been made during the evidentiary phase. And it's -- now
2 is not the time to reopen evidence, literally minutes before
3 argument is to commence and when counsel has had an
4 opportunity --

5 THE COURT: The only reason argument commenced today
6 was I didn't hold argument yesterday. But generally we hold
7 argument right after the taking of evidence, wouldn't we?

8 MR. GREENE: Well, then my position would still of
9 course be the same. If --

10 THE COURT: Okay.

11 MR. GREENE: -- if that's what happened yesterday --

12 THE COURT: Any other --

13 MR. GREENE: -- then we wouldn't be --

14 THE COURT: Any other objection?

15 MR. GREENE: Excuse me, Your Honor?

16 THE COURT: Any other objection to that material?

17 MR. GREENE: As to paragraph no. 6, now I am -- I am
18 going on -- I don't -- on what counsel represented to the
19 Court. I don't have the document in front of me because --

20 THE COURT: Give him a copy of the document now.

21 MR. GREENE: If I may have a moment, Your Honor.

22 THE COURT: I don't blame you.

23 (Pause)

24 THE COURT: Where is this declaration of Bartilson?
25 When was it dated and when was it signed?

26 MR. GREENE: It was dated -- it was signed May 17th
27 and file stamped May 20th.

28 MR. WILSON: By the way, Mr. Greene has had this

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1 declaration.

2 MR. GREENE: Oh, yeah.

3 THE COURT: He may have. The question is why it
4 wasn't introduced yesterday? What makes it rebuttal?

5 MR. WILSON: The reason it's rebuttal, Your Honor,
6 is because Mr. Greene introduced evidence yesterday about
7 suppression of evidence. And I would've introduced it
8 yesterday but when you closed the proceedings you said
9 evidence is closed, we're going to have argument, and you left
10 the bench. And I didn't have time to look at my notes and see
11 it. And I apologize for that.

12 THE COURT: I don't think that's a candid
13 description of your conduct or of the realities of the hearing
14 at all. And the record should reflect that. That's just not
15 an accurate statement of the way this case has been handled.
16 You people have had virtually infinite time within which to
17 prepare and present your case. The force, if there is any, to
18 Mr. Greene's concern is that there is -- there has been plenty
19 of time for everybody to do everything that you've needed to
20 do.

21 (Pause)

22 MR. GREENE: Your Honor, the transcript is -- a
23 number of pages -- I don't know whether I should take -- I've
24 got to read it if we're going to have to address it.

25 MR. WILSON: Only the portion quoted in our reply
26 brief.

27 MR. GREENE: Well, we -- that's -- Your Honor, there
28 are matters that were --

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1 THE COURT: Did you discuss this yesterday when you
2 left here?

3 MR. GREENE: No.

4 MR. WILSON: No.

5 THE COURT: What is the matter with you, gentlemen?
6 What's the problem? Is this kind of amateur night or
7 something, at the old courthouse? Does it occur to you that
8 when you spend an entire day going through evidentiary
9 objections, if you have something else that you want to put it
10 it might be worthwhile to discuss it with one another? Mr.
11 Wilson?

12 MR. WILSON: I apologize for that, Your Honor.

13 THE COURT: Do you apologize or was that part of a
14 program on your part to use whatever weight and muscle you
15 could use to take advantage of the defendant?

16 MR. WILSON: It was not part of any program, Your
17 Honor. It was not part of any program. We haven't done
18 anything to do that.

19 THE COURT: I don't believe you. I think that there
20 was no legitimate reason for your not having discussed this
21 matter with Mr. Greene last night. We recessed before 4:00
22 o'clock, a few moments before 4:00 to be sure, but it was
23 before 4:00 o'clock. There was absolutely no reason for this
24 matter not to have been taken up fully by the lawyers so that
25 I would not be met with this complaint by Mr. Greene that he's
26 going to have to sit there and read a transcript.

27 I just think that's an absolute affront. And I
28 think that the conduct of this litigation has similarly been

1 an effort on the part of the parties to abuse each other,
2 heedless of the point that what they were doing also was
3 abusing the public by, in effect, requiring some judicial
4 officer to go through an effort to try to unravel the mess
5 that they have created.

6 MR. WILSON: Your Honor, the evidence that we
7 submitted was very directed to the issues. We did not submit
8 masses of evidence to this Court.

9 THE COURT: That doesn't make any difference. You
10 sat here all day long, two lawyers, both with pencils in your
11 hand, and you didn't think to -- and this is Bartilson's
12 declaration. Who is Bartilson? The lawyer sitting to your
13 left. The suggestion that it came to you only after you had a
14 chance to review your notes that you were going to use the
15 declaration of your own colleague, one of the attorneys of
16 record for your client as further evidence in this case,
17 really strains anybody's capacity for flexible belief. And it
18 certainly strains mine. I just don't believe it. And I my
19 observation of the apparent ability of counsel, not their care
20 and concern for preserving the appropriate level of just
21 proceedings but their raw ability, reinforces my lack of
22 belief.

23 MR. WILSON: Your Honor, I've listened to your
24 comments. I withdraw the proffer of evidence, and I will rely
25 on what's been submitted yesterday.

26 THE COURT: Go ahead with your argument.

27 MR. WILSON: Thank you, Your Honor.

28 This case is really very simple. It involves a

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1 contract which is very specific, breaches which are admitted
2 and defenses which cannot be maintained. The agreement itself
3 is in front of you. It is Exhibit A to Exhibit II of the
4 evidence in support of the preliminary injunction. I would
5 like to point to --

6 THE COURT: What specifically did it require
7 Armstrong to do?

8 MR. WILSON: The paragraphs upon which we rely are
9 paragraphs 7-D, and accurately stated, it's what it required
10 Armstrong to refrain from doing. Because that's the issue
11 here. It's not a mandatory injunction that we're seeking but
12 a prohibitory injunction. Paragraph 7-D required Armstrong
13 not to publish books, magazine articles, et cetera, writings
14 having to do with his experience with the Church or Mr.
15 Hubbard, to maintain confidentiality.

16 THE COURT: Is there any evidence that shows that
17 he's violating any covenant not to publish books, magazine
18 articles or writings having to do with his experiences?

19 MR. WILSON: Not regarding books, magazine articles
20 or publications. But the language is a little bit more all-
21 inclusive than that. It's a very long paragraph and it
22 basically, in my reading of it, relates to any publications.
23 And the declarations which Mr. Armstrong has filed are
24 publications in our view. That's paragraph 7-D.

25 Paragraph 7-E --

26 THE COURT: Just a second. What then should he have
27 done or not have done?

28 MR. WILSON: Well, what he should not have done is

1 filed the declarations that he filed.

2 THE COURT: In what case?

3 MR. WILSON: I've got the list of declarations that
4 were filed as the breeches, and I was going to come to that
5 later. If you'd like me to deal with it now I will.

6 (Pause)

7 MR. WILSON: I think it would be helpful if I gave
8 you the, all the paragraphs we relying on, because the
9 breeches are breeches of more than one paragraph of the
10 agreement. For example --

11 THE COURT: Suit yourself.

12 MR. WILSON: -- paragraph 7-E requires Mr. Armstrong
13 to return certain materials and documents. The two paragraphs
14 that are most important here are paragraph 7-G and paragraph
15 7-H. Paragraph 7-G requires Mr. Armstrong not to voluntarily
16 cooperate in any proceeding with a person adverse to any of
17 the organizations listed as Scientology organizations in the
18 agreement, and that includes the plaintiff.

19 And paragraph 7-H contains the provision prohibiting
20 testimony unless it's pursuant to lawful process. And it also
21 contains, excuse me, a confidentiality provision with respect
22 to the terms of the settlement agreement.

23 THE COURT: Okay, let's look at it and see then just
24 exactly what the language is, and just exactly the respects in
25 which you contend it obligates Armstrong to do or refrain from
26 doing anything.

27 MR. WILSON: Which you will find --

28 THE COURT: Which of the paragraphs do you want me

1 to start with?

2 MR. WILSON: Well, we might as well start with
3 paragraph 7-D which is on page 6-7.

4 THE COURT: All right.

5 MR. WILSON: But the two most important ones are G
6 and H, and those are on 10 and 11.

7 THE COURT: Where do you want me to start? I'll
8 start wherever you'd like.

9 MR. WILSON: Well, we should start with pages 6 and
10 7, because that's the first one.

11 THE COURT: That's where I am.

12 MR. WILSON: If you look on the bottom of page 6,
13 paragraph D, it starts with the language, "Plaintiff agrees
14 never to publish or attempt to publish," and then it lists
15 books, magazine articles, books or other, so-and-so. And goes
16 on. And then the second sentence --

17 THE COURT: You contend that he's violating anything
18 there?

19 MR. WILSON: Not in the first --

20 THE COURT: You contend that he's helping anybody to
21 create a film or videotape or audiotape or program or movie?

22 MR. WILSON: Not in the first sentence. The second
23 sentence says, "Plaintiff further agrees he will maintain
24 strict confidentiality and silence." This is on page 7, about
25 ten lines down, "...with respect to experiences with the
26 Church." And then it goes on, "...knowledge he may have about
27 the Church, Mr. Hubbard," and so on. That is violated by the
28 declarations that he's filed.

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1 THE COURT: Tell me language that you're talking
2 about?

3 MR. WILSON:

4 READING:

5 "Plaintiff further agrees that he will maintain
6 strict confidentiality and silence with respect to
7 his experiences with the Church of Scientology and
8 any knowledge or information he may have concerning
9 the Church of Scientology, L. Ron Hubbard, or any of
10 the organizations, individuals and entities listed
11 in paragraph 1 above."

12 THE COURT: What exactly is he supposed to do or
13 refrain from doing then?

14 MR. WILSON: He's supposed to maintain
15 confidentiality with respect to his experiences with the
16 Church and the knowledge he has of Mr. Hubbard. He's not
17 supposed to talk about that.

18 THE COURT: Why --

19 MR. WILSON: Or --

20 THE COURT: Why would it not have been appropriate
21 to have just that single sentence and nothing else?

22 MR. WILSON: You mean and none of the other
23 paragraphs?

24 THE COURT: Yes.

25 MR. WILSON: I will tell you that, Your Honor, and
26 that was going to be part of my argument. I'll be happy to
27 get to it now.

28 THE COURT: All right.

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1 MR. WILSON: The declarations that are in evidence
2 here, some of them, are Mr. Armstrong's declarations in the
3 Van Shaick case in 1982 and his declaration in the Burden case
4 in 1982. Those are Defendant's Evidence Volume I, 31692,
5 Exhibits 1D(1) and 1D(2).

6 What Mr. Armstrong was engaged in from '82 through
7 '86 was essentially aiding litigation against the Church of
8 Scientology. And when the Church entered into the settlement
9 agreement it wanted to stop that. And that principle is what
10 led to all of these provisions that we're talking about here
11 today. It wanted Armstrong out of its hair. And the way that
12 that was accomplished was by the provisions that are in here.
13 That's why there are more than one of them.

14 Now it may very well be that what Mr. Armstrong has
15 done violates more than one provision. There's nothing wrong
16 with that. And you may be correct, that may be enough. We
17 may only have to show that.

18 THE COURT: What is it that he's supposed to do or
19 refrain from doing? What should his behavior be?

20 MR. WILSON: Mr. Armstrong --

21 THE COURT: What if somebody comes to him and says,
22 listen Armstrong, I understand that you were involved in this
23 organization, I have some questions that I want to ask you if
24 you -- please come to my office -- what is he supposed to do?

25 MR. WILSON: He's supposed to refrain -- supposed to
26 decline the invitation.

27 THE COURT: And then what if the person says, well
28 look here, it's up to you if you don't want to come but I'm

1 going to put you under subpoena -- what's he supposed to do
2 then?

3 MR. WILSON: That's fine. He may --

4 THE COURT: And is he supposed to do anything to try
5 to avoid being served with a subpoena?

6 MR. WILSON: No, all he's supposed to do is not do
7 anything to help himself be subpoenaed; for example saying,
8 fine, I'll be at the corner of such-and-such and such-and-such
9 and --

10 THE COURT: Where is that provided for?

11 MR. WILSON: All -- that is provided for in
12 paragraph 7-H which is on pages 10 and 11. Starts at the
13 bottom of page 10, and basically says he agrees not to testify
14 unless compelled by subpoena.

15 THE COURT: Yes.

16 MR. WILSON: And then the sentence that runs over
17 says he won't make himself available for subpoena in any
18 manner which invalidates the intent. In other words, it's one
19 thing to say, you may subpoena me. It's another thing to say,
20 you may subpoena me, I will be at such-and-such a place,
21 subpoena me. Or, I'll come to your office and pick up the
22 subpoena.

23 (Pause)

24 MR. WILSON: Should I continue?

25 THE COURT: Yes, what would be the -- what would be
26 the distinction between those two things? What difference
27 does it make whether he testifies under subpoena that he
28 himself voluntarily accepts, the service of which he

1 facilitates, and whether he says subpoena me, look around for
2 me and see if you can find me? What difference does that make
3 as a matter of either policy or contractual draftsmanship?

4 MR. WILSON: Well, it may -- it may -- it depends on
5 the facts. It may not make a difference. But I believe there
6 is a difference between somebody saying, I'll testify under
7 subpoena, and somebody going out of their way to accept a
8 subpoena. And it's the language --

9 THE COURT: What's the principal legal difference?

10 MR. WILSON: The legal difference is not to do
11 something that is contrary to the intent of the agreement,
12 which is that he's not supposed to disclose his experiences.
13 He's not supposed to use the subpoena as a way of getting
14 around the agreement. If this --

15 THE COURT: Why is he not supposed to disclose his
16 experiences? Simply because the parties have agreed to that?

17 MR. WILSON: That's right.

18 THE COURT: What do you do with the arguments that
19 the other side makes that on the one hand Armstrong is
20 privileged to keep the money, get the money, say and enter
21 into an agreement which he concedes at least at one time he
22 entered into without duress, says so explicitly, then later
23 says, well there was duress? And on the other hand say, well
24 now that I've got the money, by the way, some of the covenants
25 are void as against public policy? How do you deal with the
26 latter of the points?

27 MR. WILSON: That he -- that he's saying he should
28 be able to keep the money and not --

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1 THE COURT: Yes, the --

2 MR. WILSON: Well --

3 THE COURT: The things that Mr. Ford's brief refers
4 to as the public policy arguments.

5 MR. WILSON: Well, I deal with those by saying that,
6 in fact the cases that Mr. Greene relies on for that argument
7 are not the cases that are closest in similarity to this case.

8 THE COURT: Why not?

9 MR. WILSON: Because, as you'll see in our brief,
10 the Wakefield decision and the Maclean decision which are
11 foreign court decisions but which are provided to you in the
12 evidence, but not as evidence, are cases in which agreements
13 virtually identical to this agreement were enforced by --

14 THE COURT: Were they really enforced?

15 MR. WILSON: They were by federal judges.

16 THE COURT: Really? What was the scope of the
17 enforcement in those cases? What was the contracting party
18 permitted to do and prohibited from doing?

19 MR. WILSON: Well, in the Wakefield case, the
20 contracting party -- there was in fact a preliminary -- I
21 think an injunction or a temporary restraining order granted
22 against Ms. Wakefield.

23 THE COURT: What was the text of it?

24 MR. WILSON: I don't have the text here in front of
25 me, Your Honor.

26 THE COURT: Is it in the decision?

27 MR. WILSON: I think it is -- it's implied from the
28 decision.

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1 THE COURT: Take a look at it and see. Tell me what
2 you think it displays.

3 MR. WILSON: The problem with the Wakefield decision
4 is, Your Honor, that it's under seal.

5 THE COURT: Well, how am I supposed to deal with it
6 then?

7 MR. WILSON: If you look at the decision which is
8 cited to you --

9 THE COURT: Find it and let's look at it. I don't
10 have -- I mean, you don't have to begin a sentence with "if."
11 Let's do it.

12 MR. WILSON: It's referred to in our -- in our
13 opposition, reply to the opposition. And the quote from it,
14 if you'll give me a minute -- which is on pages 4 and 5 of our
15 brief, this is from the Wakefield decision.

16 THE COURT: Just a second. So where you want me to
17 go in your brief is where?

18 MR. WILSON: It's page 4-5.

19 THE COURT: The brief filed on what date?

20 MR. WILSON: It was filed on the 20th.

21 (Pause)

22 MR. WILSON: And if you'd like to look at the
23 decision, Your Honor, it is 1R to the Evidence in Support of
24 Plaintiff's Amended Motion for Preliminary Injunction.

25 (Pause)

26 MR. WILSON: And if you look specifically --

27 THE COURT: All right, I have your brief that was
28 filed on the 20th of May. You want me to look on page no. 4.

1 MR. WILSON: Right. And then if you have --

2 THE COURT: Wakefield doesn't seem to be mentioned
3 on page no. 4.

4 MR. WILSON: It's --

5 THE COURT: This thing that I have is something
6 called Plaintiff's Reply to Yanny's Amicus Curiae Brief.

7 MR. WILSON: It's the Reply to Defendant's
8 Opposition to Plaintiff's Motion. Would you like my copy?

9 THE COURT: Yes, I'll take that or anything -- here,
10 all right. I have that now.

11 MR. WILSON: Now, if you look at the bottom of page
12 4 and the top of page 5.

13 (Pause)

14 THE COURT: Well, what is that?

15 MR. WILSON: That is a quote from the Wakefield
16 appellate case which recognizes that Judge Kovachevich --

17 THE COURT: Well, I think maybe what we ought to do
18 is take a look at the -- take a look at the opinion itself.

19 MR. WILSON: Right. That would be -- I have a
20 specific paragraph there. That would be 1R to Evidence in
21 Support of Plaintiff's Amended Motion for Preliminary
22 Injunction filed May 7th. And you can have my copy if you'd
23 like.

24 (Pause)

25 MR. WILSON: Your Honor, would you like my copy?

26 THE COURT: Yes. Pass it up through Ms. Cervantes.

27 MR. WILSON: Your Honor, she's not sitting there.

28 May I approach?

1 THE COURT: Yes. Thank you.

2 MR. WILSON: You're welcome. And I have marked
3 there the paragraph which shows that in fact the District
4 Court issued an injunction against Marjorie Wakefield for
5 violating the confidentiality provisions of the agreement.

6 (Pause)

7 THE COURT: Well, the appellate decision was to
8 dismiss the purported appeal; correct?

9 MR. WILSON: That's right, and I think that there's
10 -- not having it in front of me, I think that there's a --
11 there was a reference, may have been by Judge Kovachevich to
12 the -- actually to the Criminal Division for Contempt
13 Proceedings. I'm not sure if that appears in that opinion or
14 not. Yes, that was the appeal. And the appeal was dismissed.
15 And it was an appeal from an --

16 THE COURT: How can I tell whether this was the same
17 language or different language. How do I know what the
18 agreement was in this case?

19 MR. WILSON: If you look -- if you look at the
20 quotation that's on the top of page 5 and the bottom of page 4
21 you'll see that it contains provisions very similar to this
22 provision. For example, as we said in our brief, it included
23 provisions enjoining Wakefield and the other members from
24 discussing with other than immediate family members the
25 substance of their complaints against the Church, the
26 substance of their claims against the Church, alleged wrongs
27 the Church had committed, and the contents of documents
28 returned to the Church. The District Court approved the

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1 settlement agreement, sealed the court files and dismissed the
2 case with prejudice. Those provisions are very similar to
3 this provision.

4 THE COURT: Are they similar to this provision or
5 are they not since nobody has approved this settlement
6 agreement in this case?

7 MR. WILSON: Whether or not the settlement agreement
8 has been approved does not mean whether the provisions are
9 similar.

10 THE COURT: Really?

11 MR. WILSON: Yes.

12 THE COURT: But it has to do with what the source of
13 the obligations is. In the Wakefield case, the source of the
14 obligations was the agreement approved by the Court. Here
15 what you have is an agreement which hasn't been through that
16 stage. Consequently you don't have a Court having made a
17 preexisting determination based on familiarity with the issues
18 involved in the dispute before it concerning the merits or
19 demerits, the policy, advisability or inadvisability, or
20 appropriateness or inappropriateness, or conscionability or
21 unconscionability the provisions of the agreement.

22 MR. WILSON: That is certainly correct. However,
23 the source of the obligation is the contract. And that's what
24 we're suing on, the contract. The fact that in the --

25 THE COURT: Well, the policy issue was never so much
26 as considered in Wakefield; right? In other words, the issue
27 that Mr. Greene raises was not so much as considered in
28 Wakefield.

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1 MR. WILSON: Well, in fact it was considered and --

2 THE COURT: Not in the decision you've given me.
3 That's the reason you and I studied it again at some length.

4 MR. WILSON: You can't see it from the decision, you
5 can only see it from looking at the sealed files, which
6 unfortunately you can't look at. But the fact is that the
7 provisions are similar. Your distinction between whether it
8 was court-ordered or not is a distinction. But I submit that
9 it doesn't mean that the agreement is unenforceable. It shows
10 that Judge Kovachevich did look at the agreement and did order
11 its enforcement and the provisions are very similar to those
12 here.

13 And that's a lot closer on its facts than the
14 authorities cited by Mr. Armstrong. The authorities cited by
15 Mr. Armstrong --

16 THE COURT: Well, is it your position that there is
17 no dispositive authority on the point and that what we have to
18 do is reason by analogy and principal?

19 MR. WILSON: Well, that of course depends upon your
20 definition of dispositive authority. I believe that Wakefield
21 is so close that it should be dispositive. However --

22 THE COURT: But Wakefield doesn't decide the issue.
23 Wakefield talks about a decision made by a district or an act
24 taken by a district court after which the Court of Appeal
25 determined that an appeal that was brought to it was moot;
26 consequently not a case you're controverting and consequently
27 dismissed. Isn't that a fair statement of the procedural
28 posture of Wakefield?

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1 MR. WILSON: Yes it is. And it's true that the
2 particular issues that Mr. Greene raises was not addressed by
3 Judge Kovachevich. But it is also true that she did order the
4 enforcement of the agreement. Now if that means that -- if
5 "dispositive" means that it has to be exactly on all fours in
6 every respect --

7 THE COURT: No, I mean at least the --

8 MR. WILSON: -- you're correct.

9 THE COURT: At least there must be some authority
10 indicating that the legal point under consideration in this
11 case was considered in another case and adequately briefed,
12 argued and decided.

13 MR. WILSON: That's true. That's true. Your
14 distinction is valid. I also submit to you the Trump case
15 which we cited in our brief --

16 THE COURT: Okay, let's go to that.

17 MR. WILSON: -- which you can find as Exhibit B to
18 -- in Ms. Bartilson's declaration which was not submitted for
19 evidence but just because it's foreign authority.

20 THE COURT: Okay.

21 MR. WILSON: Now, in that case --

22 THE COURT: Just a second.

23 MR. WILSON: It is a New York state case by the way.

24 THE COURT: Hang on for a minute.

25 (Pause)

26 THE COURT: Why don't you see if -- do you contend,
27 by the way, before we get off Wakefield, do you contend that
28 Armstrong is discussing the substance of his complaint against

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1 the Church?

2 MR. WILSON: Well yes, certainly he is.

3 THE COURT: To whom?

4 MR. WILSON: In those declarations, and I can give
5 you the list of them if you like, he is going through his
6 litany of the wrongs that he alleges that the Church committed
7 against him. And he goes back for years. He talks about fair
8 game and he talks about being followed and he talks about
9 being harassed, and he talks about all those things. That's
10 the substance of his complaint against the Church. That was
11 the substance of his complaint against the Church in the
12 Armstrong One case. And that's what his complaint has always
13 been against the Church.

14 And even if it wasn't, the point that I'm making
15 about the Wakefield decision is you've got provisions which
16 could be characterized as quote "gag provisions" and they were
17 upheld. The fact that the language may not be identical --

18 THE COURT: They weren't -- but I thought that you
19 and I just disposed of that point. They were not upheld.

20 MR. WILSON: Well --

21 THE COURT: They were not ruled on in the decision
22 that you've shown me. Isn't' that the way you see it?

23 MR. WILSON: They were upheld by the district court
24 and the appeal was dismissed.

25 THE COURT: Is the decision that you have given me
26 the decision from a case book?

27 MR. WILSON: Yes, it's a Fed. 2d case. I believe.

28 THE COURT: All right. So you think that this

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1 decision is where? Where would I find this? You cited at 938
2 Fed. 2d 1226 but that's not what you've given me.

3 MR. WILSON: I think you have the advance sheet
4 version.

5 THE COURT: So that's what -- that's why you think
6 the page numbering is different?

7 MR. WILSON: I think that's right. I -- I think we
8 then went back and got the official cite when it was correct.

9 THE COURT: Okay.

10 MR. WILSON: My point on that is that case is much
11 more similar to this case than the cases cited by defendants.

12 THE COURT: Do you want to talk about Trump?

13 MR. WILSON: Yes, I would like to mention Trump.

14 THE COURT: Go ahead.

15 MR. WILSON: What happened in Trump was --

16 THE COURT: Where would I find it?

17 MR. WILSON: That would be the exhibit A to Ms.
18 Bartilson's dec which is a foreign court decision. And I can
19 hand it to you if you'd like.

20 THE COURT: Just give me the official citation of
21 it.

22 MR. WILSON: We just have the slip opinion at this
23 point.

24 THE COURT: Why?

25 MR. WILSON: It's -- I think it's just -- it's very
26 recent, it hasn't come out in the official reports yet; it's
27 an April case. April 16 in fact.

28 (Pause)

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1 THE COURT: Where is it?

2 MR. WILSON: Exhibits in Support of Plaintiff's
3 Reply, May 21, 1992, Exhibit A to Bartilson Dec.

4 THE COURT: Okay.

5 (Pause)

6 MR. WILSON: And if you see that -- on page 3 of
7 that opinion there's a very long quote directly from the
8 agreement in which Mrs. Trump is not allowed without her
9 husband's consent to publish any memoirs, diaries, et cetera,
10 et cetera, et cetera. And then what happened was apparently,
11 on its own motion, the trial court struck that provision as
12 being void. Mrs. Trump went -- and there was a very harsh
13 penalty for violating this. Mrs. Trump went on and in fact
14 published a book. And then the Court of Appeal held that the
15 striking of that provision by the trial court was in error.
16 And in fact stated --

17 THE COURT: When you say the "Court of Appeal" what
18 are you talking about? This is a Supreme Court Appellate
19 Division decision that you've given me. Is there a decision
20 by the New York Court of Appeal?

21 MR. WILSON: I'm sorry. When I said the "Court of
22 Appeal" I meant it generically. I meant the Supreme Court
23 Appellate Division.

24 THE COURT: Okay.

25 MR. WILSON: I didn't mean the "Court of Appeal" as
26 we speak of it. Then the Court of Appeal held that that
27 striking of that provision was in error. And in response to
28 the argument that -- in fact, if you look on page 5 it says,

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1 "It is well settled that in the absence of any affront to
2 public policies, parties to a civil dispute have a right to
3 chart their own litigation course." Then it goes on about
4 settlement, talks about some New York cases in which there was
5 a waiver of due process and equal protection rights. And it
6 goes on.

7 And then it says -- I'm looking for the citation
8 here -- that the -- it was a private settlement agreement, and
9 the fact that the court was involved in it did not mean that
10 state action was involved.

11 In fact on page 7, the wife claimed quote,
12 READING:

13 "Absent a compelling state interest the federal
14 and New York State constitutions bar a court from
15 issuing a prior restraint barring an individual from
16 ever publishing any statements about a specific
17 subject."

18 THE COURT: Do you have a LEXIS cite for this?

19 MR. WILSON: A LEXIS cite. We --

20 THE COURT: Yes, any standardized legal research
21 cite so that --

22 MR. WILSON: We do not --

23 THE COURT: -- one doesn't have to rely exclusively
24 on the material that you've submitted?

25 MR. WILSON: I don't have one now. I can try to get
26 one for you. We got it from New York counsel -- Mr. Laziest
27 who was involved in this motion. And the Court held there was
28 no state action involved in this particular case with that

1 confidentiality provision. That's also much closer to this
2 case than the cases cited by the defendants.

3 (Pause)

4 THE COURT: How would you distinguish, if at all,
5 the cases cited by defendants either on their facts or as a
6 matter of principal?

7 MR. WILSON: How would I distinguish all of them?

8 THE COURT: Any of them. Whatever it is you want to
9 do.

10 MR. WILSON: Well, let's start with the Mary B&R
11 case. In that case there was a charge of child abuse against
12 a doctor and a confidential settlement agreement which was
13 much, much, much broader than the one here. Basically it
14 said, not going to testify, not going to do anything, I can't
15 say anything even if I'm subpoenaed. And the Court refused to
16 enforce that. And if you read that decision it's clear that
17 the rationale that the Court is using is that the division of
18 medical quality assurance -- I'm sorry, it's the Board of
19 Medical Quality Assurance, has a public interest in knowing
20 what doctors are doing.

21 So there's two distinctions between this case and
22 that case. Number one, the public interest of the Board of
23 Medical Quality Assurance. Which, although Mr. Armstrong
24 might think he's a champion of the public interest he
25 certainly doesn't rise to the level of the Board of Medical
26 Quality Assurance.

27 And number two, the provision in that -- in that
28 case is far broader than the case that -- than the provisions

1 here. That's the Mary B&R case.

2 Now the other case that they rely on is the Loaiasis
3 case, P-I-C'L, Loaiasis. And in that case the agreement
4 provided that the complainant in a criminal case would refuse
5 to prosecute. And because the complainant had no control over
6 the prosecution once he made the complaint the Court held the
7 only meaning the contractual term quote "refuse to prosecute"
8 could have was that the complainant would refuse to testify.
9 And here the agreement doesn't say he's going to refuse to
10 testify, it just says he has to be subpoenaed.

11 THE COURT: Precisely what do you contend the
12 language of a proper preliminary injunction should be?

13 MR. WILSON: The language of a proper preliminary
14 injunction should be the language of the temporary restraining
15 order which Judge Dufficy entered. Which we -- which is in
16 the record. And it's also attached --

17 THE COURT: State it for me. Read it out loud.

18 MR. WILSON: Okay.

19 THE COURT: Or do whatever you want so that I have
20 it before me and I can see --

21 MR. WILSON: Well, it is -- it is --

22 THE COURT: -- line by line what you're talking
23 about.

24 MR. WILSON: It is -- the easiest way to do it would
25 be to refer you to an exhibit to Ms. Bartilson's declaration
26 which is not in evidence but is certainly before you because
27 it's the record in this case. And that is Exhibit C to Ms.
28 Bartilson's declaration which is in the same packet that the

1 Trump decision was in.

2 THE COURT: Well Exhibit C as far as I can tell is
3 the Breckenridge order dismissing action.

4 MR. WILSON: No, I --

5 THE COURT: Maybe you mean Exhibit --

6 MR. WILSON: In my packet Exhibit C is the temporary
7 restraining order of March 5.

8 THE COURT: Really? Maybe I'm looking at the wrong
9 piece of paper then. No, you're right. I'm looking at
10 Berry's declaration. Just a minute.

11 (Pause)

12 THE COURT: You're correct and I was mistaken. I
13 have it here. It is Exhibit C of course.

14 MR. WILSON: The language that -- I submit this
15 language has actually worked while it was in effect.
16 Basically it starts on page 2 with paragraph 2. It refers to
17 the specific paragraph numbers of the agreement and continues
18 through page 3. It also contains paragraph 7 which was
19 inserted in response to Mr. Greene's concern that Mr.
20 Armstrong not be prohibited from working for him. And of
21 course it doesn't; it just prohibits him from working for Mr.
22 Greene except on matters involving the Church of Scientology.
23 And I don't think that I can do any better than this language.

24 THE COURT: Turn to page no. 1, line 27. Why should
25 that language be deleted?

26 MR. WILSON: That language was deleted at the
27 request of Mr. Berry and he can, even though he's not supposed
28 to speak I would ask him if I'm wrong to tell me. Mr. Berry

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1 and I had a telephone conversation when we were doing the
2 proposed order, and Mr. Berry was concerned that that might
3 apply to his client, Mr. Yanny, in preparing his case for
4 trial. And that's why that was stricken. Is that accurate?

5 MR. BERRY: It was the acting in concert concern.

6 MR. WILSON: Right, that your client --

7 MR. BERRY: Yes.

8 MR. WILSON: -- might have been acting in concert.
9 That's why that was stricken.

10 THE COURT: So any order, if there is one, should
11 just exclude attorneys at law?

12 MR. WILSON: Well, no. Because if Mr. Armstrong
13 acts through his attorney to violate the provisions of the
14 agreement it should apply to that. What Mr. Berry wanted
15 stricken and the reason he wanted it stricken was that Mr.
16 Yanny was involved in the RTC versus Yanny case, not as an
17 attorney for Mr. Armstrong. And he -- I didn't believe that
18 this would apply to Mr. Yanny anyway but Mr. Berry was
19 concerned, and we struck the language. I didn't see that it
20 hurt to strike it.

21 But it was not -- we do still have agents in there.
22 So if someone is Mr. Armstrong's agent then he still is
23 covered by the temporary restraining order. And hopefully the
24 preliminary injunction.

25 (Pause)

26 THE COURT: Is there evidence that Armstrong is
27 publishing books or magazine articles?

28 MR. WILSON: No.

1 THE COURT: Why should there be an order on it?

2 MR. WILSON: Well, Your Honor, I suppose the reason
3 that there shouldn't be -- that there should be an order on it
4 is that since he's violated the other provisions we don't
5 want, by not ordering him to comply, to imply that he can
6 violate the other provisions. And perhaps more importantly, I
7 don't want to have to come back in here again and say, well I
8 want to have this expanded because now Mr. Armstrong is
9 publishing book and magazine articles. But I will concede to
10 you that we have no evidence that he's doing that.

11 THE COURT: Let's -- is there any other legal
12 authority that you want to cite or talk about?

13 MR. WILSON: Yes, there is. The court and case
14 which is before you, Your Honor. In that case Judge Savitch
15 supervised the settlement. And basically Mr. Corydon objected
16 after entering into it on the record. And Judge Savitch
17 enforced it, made him sign it.

18 MR. GREENE: Your Honor, I must object. That's not
19 in evidence. Don't mean to interrupt but I --

20 THE COURT: Well, there's an objection on the ground
21 that there's --

22 MR. GREENE: On the grounds that it's not --

23 THE COURT: -- been a reference to --

24 MR. GREENE: -- before the -- that it is --

25 THE COURT: What do you contend is in the evidence?

26 MR. WILSON: I think --

27 THE COURT: What do you contend is in the record and
28 tell me --

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1 MR. WILSON: I think that I --

2 THE COURT: -- where you think it is?

3 MR. WILSON: I think I put Mr. Drescher's
4 declaration in yesterday, according to my notes.

5 THE COURT: Let's find out. Tell me where you think
6 that's referred to. Just a minute.

7 MR. GREENE: And I respectfully differ.

8 THE COURT: Just a second.

9 MR. WILSON: If it's not in then it's not in. But I
10 think --

11 MR. GREENE: Mr. Drescher's --

12 MR. WILSON: I thought it was there.

13 MR. GREENE: Excuse me, I'm sorry. Mr. Drescher's
14 declaration was not in, and in fact counsel this morning as we
15 -- started saying that he wanted to introduce both the
16 Bartilson and Drescher declarations in rebuttal.

17 MR. WILSON: Well then I mis-spoke.

18 THE COURT: Yes, I don't have a reference to it. Do
19 you have a specific recollection? Do you know what --

20 MR. WILSON: Well, the only --

21 THE COURT: -- item it was?

22 MR. WILSON: I was taking notes from my list of what
23 I was going to put in yesterday and I had a check mark next to
24 Mr. Drescher's declaration. And Ms. Bartilson said last night
25 when we were going over it --

26 THE COURT: No, you did introduce one Laurie
27 Bartilson declaration. That was Exhibit 5.

28 MR. WILSON: That's right. That's a different one.

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1 THE COURT: Okay. No, I don't have the Drescher
2 declaration that I can see on my notes.

3 MS. BARTILSON: I have it as no. 17.

4 MR. WILSON: We have it as no. 17 on our -- on the
5 list of things that we submitted. I thought I had submitted
6 it.

7 (Pause)

8 MS. BARTILSON: And there were some exhibits to it
9 as well.

10 MR. WILSON: What?

11 (Counsel Colloquy)

12 THE COURT: Go ahead with your argument. I think
13 that Mr. Greene is correct.

14 MR. WILSON: The other legal authorities -- there's
15 the Maclean case, which is similar to the Wakefield case.

16 THE COURT: Where's the Maclean case?

17 MR. WILSON: Maclean case? Do you have it?

18 (Counsel Colloquy)

19 MR. WILSON: It was a supplemental submission. We
20 didn't bring all of the --

21 THE COURT: What's the citation?

22 (Pause)

23 MR. WILSON: It was an 11th Circuit slip opinion.

24 THE COURT: Fine. What's the citation?

25 MR. WILSON: I don't have a citation for it.

26 THE COURT: Where is it in the record or in the
27 materials that are submitted to me so that we can pull it and
28 you and I can discuss it?

1 MR. WILSON: There was a supplemental exhibit that
2 was filed.

3 THE COURT: When? What date?

4 MR. WILSON: I don't have that. It was filed on
5 April 21st.

6 THE COURT: Under cover of what document? What --
7 if you want to look at a piece of paper --

8 MR. WILSON: I'm sorry, Your Honor, I --

9 THE COURT: -- tell me where it is, what piece of
10 paper you want me to look at it. I'll be happy to do it.

11 MR. WILSON: Your Honor, I can't give you that
12 information so I can't ask you to look at it.

13 THE COURT: All right, any other legal authorities
14 you want to refer to?

15 MR. WILSON: The only other authorities are the ones
16 that are cited in our brief; Hoffman versus United
17 Telecommunications, Inc. Would you like me to tell you --

18 THE COURT: Yes, let's get the cite on that.

19 MR. WILSON: That's 687 F.Supp. 512. That was a
20 confidential settlement agreement in an employee
21 discrimination case.

22 THE COURT: Now you -- have you supplied that case
23 to me?

24 MR. WILSON: Okay, we -- I don't -- I don't know,
25 Your Honor. Those are all the authorities.

26 THE COURT: Where would you like me to look to find
27 the case so that I can discuss it with you now? Or would you
28 rather not have it discussed now or?

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1 MR. WILSON: I don't think --

2 THE COURT: Just exactly what do you want to do
3 about it?

4 MR. WILSON: I -- I can't -- I can't cite you to a
5 place where you can find it so.

6 THE COURT: Okay. Is there any case, pardon me,
7 that you know of in which an appellate court in California has
8 held that provisions of the kind involved in the agreement
9 that is presented in this case are proper and enforceable
10 agreements and/or what acts violate that agreement?

11 MR. WILSON: There is no appellate case that I'm
12 aware of --

13 THE COURT: Okay.

14 MR. WILSON: -- in which --

15 THE COURT: How about in any other state?

16 MR. WILSON: I was about to -- the only appellate
17 case that I think in California that comes close.

18 THE COURT: Yes.

19 MR. WILSON: Doesn't talk about provisions similar
20 to this -- is ITT Telecom versus Dooley, a --

21 THE COURT: Let's have the cite.

22 MR. WILSON: ITT Telecom Products --

23 THE COURT: Versus?

24 MR. WILSON: Dooley, D-O-O-L-E-Y; 215 Cal.App. 3d
25 307.

26 THE COURT: And your theory is that's that closest
27 case?

28 MR. WILSON: That's a case that's close on

1 principal.

2 THE COURT: Okay.

3 MR. WILSON: In other words it was a non --

4 THE COURT: Okay, let's -- let's wait for just a
5 second, I'll get that and you and I can look at it and study
6 it together. Because there's some questions I need to ask you
7 about that one.

8 (Pause)

9 THE COURT: Tell me what portion of it you think is
10 pertinent on principal.

11 MR. WILSON: Well, on principal you have to read the
12 entire case because what it basically says, there was a
13 contractual nondisclosure provision and the Court held that
14 that was a common provision, although it was in the employment
15 context in that it was a nondisclosure of the type typically
16 entered into in certain kinds of employment relationships.
17 But the person who signed it made a constitutional free speech
18 argument and the Court said no, there's nothing wrong with
19 somebody agreeing --

20 THE COURT: Well, the confidentiality portion of it
21 begins at page 317.

22 MR. WILSON: And if you go to 319 that's where the
23 Court --

24 THE COURT: Okay.

25 MR. WILSON: -- talks about that there's -- that
26 that's not a free speech violation.

27 THE COURT: Yes. All right. Would the fact that
28 the relationship in ITT Telecom Products, Corp. versus Dooley

1 was an employment relationship rather than a -- rather than
2 the relationship involved in this case make any difference?

3 MR. WILSON: Well actually, I think it makes a
4 difference in our favor.

5 THE COURT: Why?

6 MR. WILSON: Because I think that there's much more
7 of a public policy in enforcing a settlement agreement than in
8 enforcing an employment agreement with a nondisclosure
9 provision. I concede, it's a difference. And I didn't
10 represent to the Court that the case was on all fours but that
11 the principal should apply.

12 THE COURT: All right. What do you -- pardon me.
13 What do you contend the evidence shows about the specific acts
14 that Armstrong is engaging in contrary to the provisions of
15 the agreement?

16 MR. WILSON: Armstrong worked as a paralegal in the
17 Yanny case. And that is shown by the transcript of
18 proceedings in RTC v. Yanny, page 25. It is Exhibit 1-E to
19 our Request for Judicial Notice in Support of the Preliminary
20 Injunction.

21 THE COURT: Now if he rendered merely routine
22 clerical and stenographic services, would that be subject to
23 being restrained?

24 MR. WILSON: Yes.

25 THE COURT: Why?

26 MR. WILSON: The reason is because the agreement
27 prohibits any assistance. And there's a good reason for that.
28 Because how are we supposed to know -- think about it. Let's

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1 posit your hypothetical. Mr. Armstrong has just written --

2 THE COURT: Where is the agreement? Tell me the
3 language in the agreement you're talking about.

4 MR. WILSON: Okay. The language in the agreement is
5 in paragraph -- it's paragraph 7, and it's paragraph I believe
6 7 -- I think it's 7-E.

7 THE COURT: No, I think it's 7-G but it doesn't make
8 any difference. You pick the paragraph you want.

9 MR. WILSON: Oh, you know Your Honor, I handed up --
10 the reason why I don't have it is because I think it's in the
11 thing I handed up to you.

12 THE COURT: Do you? Okay.

13 MR. WILSON: Yeah.

14 THE COURT: Here's what you handed up to me. This
15 is called Evidence Submitted in Support of Plaintiff's Amended
16 Motion for Preliminary Injunction, filed May 7, 1992 and I'm
17 giving that back to -- Ms. Cervantes will take it, if you
18 don't mind. Just go around there. Thank you.

19 (Pause)

20 MR. WILSON: Your Honor is right. It is paragraph
21 7-G and it says, "will not voluntarily assist or cooperate
22 with any person adverse to Scientology in any proceeding
23 against any of the Scientology organizations, individuals, et
24 cetera." And the reason why that provision is so broad is
25 precisely to cover the hypothetical which Your Honor posited,
26 in which Mr. Armstrong is merely rendering clerical
27 assistance.

28 And it has to do with the difficulty of enforcement.

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1 How are we supposed to enforce an agreement specifically where
2 Mr. Armstrong says, well I can do it because I'm only doing
3 clerical work that somebody else could do. There's really no
4 way to tell that. And I think that would put the Court in the
5 untenable position of having to figure out whether Mr.
6 Armstrong was typing or whether he was giving some other kind
7 of assistance. That's why that provision is so broad, that's
8 why it should be so broad. And that's why in the hypothetical
9 that Your Honor gave it would be a violation.

10 (Pause)

11 THE COURT: But you could not prevent him from being
12 a paralegal or engaging in any other occupation generally or
13 engaging in paralegal activities with any other litigant
14 against any other parties; right?

15 MR. WILSON: Absolutely not and we don't contend the
16 agreement applies to that.

17 THE COURT: Okay. What else do you contend that he
18 was doing and where do you contend that that was violated with
19 the agreement and that ought to be restrained?

20 MR. WILSON: Would you like me to give -- I have
21 some more cites for the fact that he worked as a paralegal in
22 Yanny. I can skip over those unless you want me to give them
23 to you.

24 THE COURT: No, just go to the next act of --

25 MR. WILSON: Okay.

26 THE COURT: -- what you contend is violation and
27 show me where they --

28 MR. WILSON: He admits, Armstrong admits helping

1 Yanny represent the Aznarans. That is paragraph 2, 3 and 4 of
2 Mr. Armstrong's July 19, '91 declaration. And that is Exhibit
3 1-F to the Request for Judicial Notice that I just referred
4 to, the one filed in support of --

5 THE COURT: What does that mean, "helped Yanny?" Is
6 he a lawyer? It doesn't seem to -- that doesn't seem so from
7 the record.

8 MR. WILSON: Yanny is a lawyer.

9 THE COURT: No, no. Is he, Armstrong a lawyer. It
10 doesn't seem so --

11 MR. WILSON: Well --

12 THE COURT: -- from the record.

13 MR. WILSON: No, he's not a lawyer.

14 THE COURT: How does he quote "help Yanny represent
15 the Aznarans" end quote?

16 MR. WILSON: He basically -- he describes those --
17 he describes what he did in paragraphs 2, 3 and 4. It's a
18 hand-written declaration. And it talks about him receiving a
19 telephone call from Mr. Yanny. Yanny says, I need your help.
20 Yanny reiterated a request for help. And then it goes on and
21 describes that Yanny was representing Rick and Vicki Aznaran
22 who had been induced to fire their attorney, and Yanny had
23 come in to help. Yanny explains what he needed.

24 Mr. Armstrong says he went to L.A. and then
25 describes that he counseled Mr. Yanny regarding some other
26 things. He travelled to Los Angeles, he stayed at Yanny's
27 home, did work in his office, and did write and execute a
28 declaration giving my knowledge of the effect of the December

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1 1986 settlement agreements on the ability of the Aznarans and
2 other individuals victimized by quote "the organization."

3 THE COURT: Tell me what exactly he did there? He
4 --

5 MR. WILSON: Okay.

6 THE COURT: -- went to Yanny's house and then he did
7 what?

8 MR. WILSON: Went to Yanny's house, quote "did work
9 in his [Yanny's] office." And I can't give you the page cite
10 because it's not numbered.

11 THE COURT: That's all right.

12 MR. WILSON: Did work in Yanny's office.

13 THE COURT: What does that mean? What is it that
14 he's telling us happened?

15 MR. WILSON: Well, then he goes on. And I guess
16 what he means -- we don't know exactly what he means by
17 "work." But he says,

18 READING:

19 "...and did write and execute a declaration on
20 July 16 giving my knowledge of the effect of the
21 December 1986 group settlement agreements on the
22 ability of the Aznarans and other individuals
23 victimized by the organization to obtain proper
24 legal representation."

25 THE COURT: Now your theory is that Yanny could have
26 telephoned him; Armstrong could have spoken with him;
27 Armstrong would have said, listen, I can't help you, I mean I
28 can't do anything except testify under oath in a response to a

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1 subpoena; Yanny could have put him under subpoena. Then
2 Armstrong would have showed up and he would have said the same
3 thing that was in the declaration, and that would be entirely
4 proper and not subject to being restrained in any way; right?

5 MR. WILSON: That's right.

6 THE COURT: Okay. Go ahead. What else did you --
7 do you think the evidence shows that Armstrong did that is
8 contrary to the terms of the agreement? You think this is a
9 7-G violation by the way --

10 MR. WILSON: Yes, I do.

11 THE COURT: -- what you just talked about, right?

12 MR. WILSON: Yes I do.

13 THE COURT: Okay.

14 MR. WILSON: If you look at the Bartilson dec -- I'm
15 sorry, the --

16 THE COURT: Tell me the act and then we'll go to the
17 --

18 MR. WILSON: The act is his helping Mr. Greene in
19 the Aznaran litigation. And that is referred to in the letter
20 to Eric Lieberman from Jerry Armstrong, which is Exhibit 5 of
21 the Evidence in Support of the Amended Motion for Summary
22 Judgment.

23 THE COURT: You contend that that was a violation of
24 what provision of the agreement?

25 MR. WILSON: That's also a violation of 7-G.

26 THE COURT: So you think that's a 7-G violation.

27 MR. WILSON: Right.

28 THE COURT: And where do you want to look in the

1 evidence?

2 MR. WILSON: That is Exhibit 5 -- I have it in mine.

3 (Counsel Colloquy)

4 MR. WILSON: Exhibit 5 to Evidence Submitted in
5 Support of Plaintiff's Motion for Preliminary Injunction.

6 THE COURT: Get that for me please, Ms. Cervantes.

7 (Pause)

8 THE COURT: Thanks. What was the filing date?

9 MR. WILSON: Your Honor, I mis-spoke. I gave you --
10 I gave you a cite for a supporting, for evidence supporting
11 that but it's not what -- it's not the Lieberman letter. That
12 -- the cite I gave you is to the -- is to Ms. Bartilson's
13 declaration which does establish the same thing. It's Ms.
14 Bartilson's declaration which was admitted yesterday, in which
15 she describes how she --

16 THE COURT: Find that for me.

17 MR. WILSON: -- had been in telephone contact with
18 Mr. Greene's office. Mr. Armstrong --

19 THE COURT: What's the cover page?

20 MR. WILSON: The cover is Evidence Submitted in
21 Support of Plaintiff's Amended Motion for Preliminary
22 Injunction.

23 (Pause)

24 THE COURT: What's the filing date?

25 MR. WILSON: May 7, 1992.

26 (Pause)

27 THE COURT: I have it. And you want me to be at
28 Exhibit what?

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1 MR. WILSON: It's Exhibit B to Exhibit II, which is
2 a letter from Mr. Armstrong to Mr. Lieberman in which he
3 describes that he's working on the Aznaran litigation. Now
4 that letter is not a violation; it's evidence of a violation.

5 (Pause)

6 THE COURT: Go right ahead.

7 MR. WILSON: Okay. That's evidence of the
8 violation. He also filed a declaration or gave a declaration
9 in the Aznaran case dated 9-3-91. That's 1-L in that same
10 packet.

11 THE COURT: It's 9-3-91?

12 MR. WILSON: Yes.

13 THE COURT: And its location is what in this packet?

14 MR. WILSON: It's 1-L in that packet.

15 THE COURT: 1-L.

16 MR. WILSON: It's entitled Declaration of Gerald
17 Armstrong.

18 (Pause)

19 THE COURT: Go ahead.

20 MR. WILSON: And then --

21 THE COURT: Just a second. This would be --

22 (Pause)

23 THE COURT: And the previous letter, the Lieberman
24 letter or the letter to Lieberman?

25 MR. WILSON: Right. That is --

26 THE COURT: Where did you locate that?

27 MR. WILSON: That was Exhibit B to Exhibit II to the
28 same packet that you have there; Evidence Submitted in Support

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1 of Plaintiff's Amended Motion, et cetera.

2 THE COURT: Go ahead with your review of the
3 evidence concerning what you think are Armstrong's acts in --
4 wait a minute before we do that. You contend that the
5 declaration in the Aznaran case is a 7-G?

6 MR. WILSON: That's correct.

7 THE COURT: Go ahead with any other review of
8 evidence concerning acts that you contend Armstrong has
9 committed which you contend to be in violation of the --

10 MR. WILSON: He gave --

11 THE COURT: -- agreement and which should be
12 restrained, and give your agreement citation.

13 MR. WILSON: That is -- another one would be the
14 declaration of Gerald Armstrong dated 7-16-91 in the Yanny
15 case. That is Exhibit 1-K in the same packet, right before
16 the -- actually, as long as you're looking, it's J and K;
17 they're both declarations of Armstrong, dated 7-16-91. And
18 whether we want to consider them one violation or two appears
19 to me to be of very little consequence.

20 THE COURT: Well, let's take Exhibit K. That talks
21 about a conversation to which Armstrong claims he was a
22 witness which allegedly occurred on July 16, 1991.

23 MR. WILSON: Correct.

24 THE COURT: Your view is that he would prohibited
25 from doing that?

26 MR. WILSON: My view is he's prohibited from
27 voluntarily giving a declaration. It's not that he's --

28 THE COURT: Well, do you mean to say that there need

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1 be no nexus between Armstrong's behavior on the one hand and
2 something having to do with information that he has because of
3 his affiliation with your client on the other hand?

4 MR. WILSON: Like --

5 THE COURT: In other words, if somebody -- let's say
6 that this is what's happening. Let's say that there is a
7 lawsuit in which your client is involved and he is a witness
8 to something but it does not depend on his having preexisting
9 information concerning your client. Let's assume for example
10 that he's here in court and a lawsuit is going on. And on the
11 way out the lawyers get into a fight. One of the lawyers
12 says, look Armstrong, give a declaration will you to show that
13 the other fellow took the first punch and he says, well all
14 right, I'll do it. And he does.

15 The lawyer who asks for the declaration is adverse
16 to Scientology and adverse to -- in that lawsuit, and adverse
17 to the other person who hit him. Your contention is that that
18 would be improper?

19 MR. WILSON: Well, to be honest with you, I haven't
20 thought of that particular situation.

21 THE COURT: The reason you haven't thought of it is
22 because the language in the agreement is susceptible of
23 potentially indeterminate interpretations; correct?

24 MR. WILSON: Well, I suppose you could say that. I
25 don't believe it's susceptible to those determinations. I
26 think that if Armstrong is aiding persons adverse to
27 Scientology he's not supposed to do that and if he's doing it,
28 and let's use your hypothetical. If the lawyer wants to use

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1 Mr. Armstrong's testimony all he has to do is take a
2 deposition. You can take any agreement and make a
3 hypothetical that perhaps wasn't intended to be covered by the
4 language but which is in fact covered by it.

5 THE COURT: Well no, what we're trying to do is
6 we're trying to construe the agreement reasonably so that we
7 know what it means to quote "voluntarily assist or cooperate
8 with any person adverse to Scientology in any proceeding
9 against any of the Scientology organizations" and so forth,
10 end quote. Voluntary assistance or cooperation doesn't mean
11 voluntarily assistance or cooperation which doesn't trade on
12 some special talent or skill that Armstrong has.

13 What if, for example, there's a lawsuit between
14 Scientology on the one hand and the Red Cross.

15 MR. WILSON: Your Honor --

16 THE COURT: Armstrong gives money to the Red Cross.
17 He says I think it's good, I think people ought to be helpful
18 when they have floods. You certainly wouldn't be able to beef
19 about --

20 MR. WILSON: Obviously --

21 THE COURT: -- that, would you?

22 MR. WILSON: Obviously not. I mean, obviously the
23 intent of the agreement was that there had to be some
24 connection between what Armstrong was doing and what he had
25 previously been involved with with the organization. And in
26 this declaration there really is. I mean, he's with Yanny
27 because of his previous connection with the organization.
28 He's helping Yanny because of his previous connection with the

1 organization; he's not helping Yanny because he just happens
2 to be there, as in your hypothetical where he just happens to
3 be in court. I think that is a distinction that needs to be
4 made.

5 THE COURT: The distinction that I would make, the
6 question is whether the contract makes that distinction.

7 MR. WILSON: Well, the contract doesn't explicitly
8 make that distinction but it says "voluntarily aiding persons
9 adverse to Scientology." And I think in your hypothetical,
10 particularly the Red Cross hypothetical, obviously there has
11 to be some reasonable construction of the contract. And no
12 contract -- I mean I submit to Your Honor that any contract
13 can be -- you can do to any contract what you did with this
14 hypothetical to this one. You can make a hypothetical that is
15 not covered by it but that obviously the parties entered into
16 it would not contend the situation applied. There's -- we
17 would not go to court and try to restrain Mr. Armstrong from
18 giving money to the Red Cross.

19 THE COURT: What other acts do you contend the -- so
20 you contend this is a 7-G violation?

21 MR. WILSON: That's right.

22 THE COURT: What other acts do you contend the
23 evidence shows Armstrong committed in what you claim to be a
24 violation of the agreement which under your client's theory --

25 MR. WILSON: I think that --

26 THE COURT: -- ought to be restrained?

27 (Counsel Colloquy)

28 MR. WILSON: I believe that Exhibit E to Mr.

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1 Drescher's declaration. The declaration didn't come in but I
2 think that it's Exhibits in Support of Plaintiff's Reply to
3 Defendants' Opposition to Motion for Preliminary Injunction
4 and Reply to Amicus Brief of Joseph Yanny, Volume I. And they
5 --

6 THE COURT: Well, is there any evidence standing for
7 the proposition that he's violated 18-D which is the agreement
8 provision which disables the parties from disclosing the
9 contents of the agreement?

10 MR. WILSON: Well yes. He's filed the agreement in
11 court in the Marin County action. That's -- that's here.
12 He's --

13 THE COURT: How could he avoid doing that?

14 (Counsel Colloquy)

15 MR. WILSON: He attaches that agreement to at least
16 two of the declarations that are in the record here. And it
17 is -- the exhibit I just referred to? 1-J?

18 THE COURT: Yes.

19 MR. WILSON: He attaches that declaration, he did in
20 the case in which it was filed.

21 THE COURT: Any other arguments that you have at all
22 that you haven't already made?

23 MR. WILSON: I do have some arguments regarding the
24 -- the duress argument. First of all --

25 THE COURT: Assuming that there is a preliminary
26 injunction in favor of your client, what should the amount of
27 the undertaking be? Is there any way that the case can be
28 tried for less than -- you tell me how much money.

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1 MR. WILSON: You mean how much the attorneys fees
2 would be to try the case?

3 THE COURT: Sure.

4 MR. WILSON: On our side?

5 THE COURT: On the other side.

6 MR. WILSON: On the other. It's hard for me to
7 estimate the other side. Give me a minute.

8 THE COURT: Well, figure out what you would charge.
9 The other side is going to charge at least what you charge.

10 MR. WILSON: Probably fifty thousand dollars
11 (\$50,000). And Your Honor, and I tell this to my clients,
12 giving estimates on how much it's going to take to try a case
13 is almost impossible.

14 THE COURT: How do you figure you're going to have
15 to arrange your affairs to get the case ready for trial? What
16 are you going to do for example? You're going to take the
17 depositions of whom?

18 MR. WILSON: Take the depositions of Mr. Armstrong,
19 Mr. Greene, and Mr. Flynn. Perhaps another lawyer that Mr.
20 Armstrong worked for, Mr. Elstead. Perhaps two more
21 depositions.

22 THE COURT: So you visualize six depositions. How
23 long will they last?

24 MR. WILSON: Probably Mr. Armstrong's would not last
25 longer than two days. I would say none of the others would
26 last longer than a day.

27 THE COURT: So that would be, it looks to me like
28 seven days of depositions. Do you visualize any motion

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1 practice?

2 MR. WILSON: We -- we might be able to resolve some
3 issues by summary judgment. However, the change in law
4 requiring that, you know, an entire cause of action be taken
5 care of by summary judgment might make that impossible.

6 THE COURT: How many days do you think it will take
7 to try the case?

8 MR. WILSON: A week to two. And Your Honor, as I
9 said yesterday, we have had a lot of problems just getting
10 people's depositions taken. And --

11 THE COURT: How many days do you think -- well, in
12 your view you'll be ready to try the case sometime within
13 about six months to nine months?

14 MR. WILSON: Actually I think I can be ready to try
15 the case in three months, assuming that to use the vernacular,
16 we don't get jerked around in taking depositions.

17 THE COURT: Okay.

18 MR. WILSON: Which we have been, and if you'd like
19 to see the evidence on that I can show it to you.

20 THE COURT: Okay. Now what if this case were to go
21 up on appeal from an order that I made? What would happen
22 there? Would the bond be or would the amount expended in
23 attorneys fees be greater or less than the amount that you
24 visualize?

25 MR. WILSON: Well, if the case went up on an appeal,
26 the appeal would probably be less than the fifty thousand
27 dollars (\$50,000) for trial but it certainly wouldn't reduce
28 the trial costs.

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1 THE COURT: Okay.

2 MR. WILSON: And given the extensive record, I would
3 imagine the briefing would be quite extensive.

4 THE COURT: What do you -- what else do you want to
5 argue? You said you want to make some other arguments?

6 MR. WILSON: Well, I want to briefly cover a couple
7 of points.

8 THE COURT: Go ahead.

9 MR. WILSON: First of all, the unclean hands
10 argument that's been made. The major problem with that is
11 that none of the conduct that they've alleged has any
12 connection with what we're trying to enforce here. In the
13 case of Carmen versus Athern, 77 Cal.App. 2d 585, holds that
14 this kind of relief should not be denied because prior
15 misconduct may indirectly effect the problem before the Court.
16 In other words, Mr. Armstrong is trying to bring in everything
17 that's happened in the last fifteen years and saying because
18 of all this stuff, Scientology is bad, we have unclean hands,
19 you can't enforce this agreement. And that is not what the
20 law says.

21 It's also contrary to paragraph 7-I of the agreement
22 which says that in litigation between Mr. Armstrong and the
23 Church, neither party -- Mr. Armstrong is not going to use the
24 evidence developed in the Aznaran -- the Armstrong case
25 against the Church. And then in says, in other words quote,
26 "The slate is wiped clean." So he's agreed basically that
27 that conduct is not something that he's going to use.

28 Further, the only thing that Mr. Armstrong alleges

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1 that we've done that really has anything to do with this
2 particular action that he's taken is that we said some things
3 about him that were said to refute declarations that he had
4 given. And Mr. Heller's declaration, which is in evidence,
5 says the reason we wanted to have the provisions be one way,
6 that we could talk about Mr. Armstrong but he couldn't talk
7 about us, was because there were all these declarations
8 floating around that he'd given and we might -- we never knew
9 when they were going to surface and we might have to refute
10 them some day.

11 The collateral estoppel argument is based upon a
12 misreading of the transcript of December 23 of 1991 in which
13 Judge Geernaert clearly, on jurisdictional grounds, said that
14 he did not have jurisdiction to enforce the agreement in the
15 prior case. He made no factual findings and no legal
16 findings. Collateral estoppel does not apply.

17 I don't believe that there is any evidence of duress
18 in the record since you struck the long portions of Mr.
19 Armstrong's declaration that talked about what he told Mr.
20 Flynn and what Mr. Flynn told him. However, if there's any
21 question in your mind about whether there was duress, the
22 videotape which is before you which is in evidence shows there
23 was none. If you get beyond that and assume there was duress,
24 there's still severe problems with it because clearly, under
25 Civil Code 1689(a)(1) duress has to be with the connivance of
26 the party against who it's asserted. In other words, we had
27 to be part of the duress, we had to know about it. And the
28 videotape clearly shows we didn't. In fact, we were duped.

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1 If Mr. Armstrong really was acting under duress he duped us
2 into thinking that he wasn't.

3 THE COURT: How's that?

4 MR. WILSON: Because if you look at the videotape he
5 clearly says "I'm not under duress." If you look at it, he's
6 relaxed, he's happy, he's smiling, he's -- he doesn't look
7 like he's acting under duress. There's no evidence that shows
8 that this plaintiff had any knowledge of any duress or
9 connived in it in any way.

10 Finally, even if you get past that, if there was
11 duress that makes the contract voidable and not void. We
12 discussed this in our brief. And when the contract is
13 voidable or -- and not void, you can't accept benefits under
14 it, you can't ratify it. Mr. Armstrong took the money and
15 took the benefits under the contract. He didn't promptly to
16 rescind.

17 Finally, it's part of the same argument, if you want
18 to make -- if you want to void a contract because of duress,
19 you can't void the whole -- part of it, you've got to void the
20 whole thing; you've got to give back the money. And Mr.
21 Armstrong hasn't done that.

22 THE COURT: What if he did? What if he said, here
23 you can have the money back, I want to go out and do whatever
24 I want?

25 MR. WILSON: Well, you mean would we accept it?

26 THE COURT: Yes.

27 MR. WILSON: Let me say this. I haven't discussed
28 it with my clients; I wouldn't tell you what we'd do or what

1 we wouldn't do. I would say we have no obligation to do it
2 and he at this point has no right to do it, and I seriously
3 doubt he's going to do it. The argument's been made that this
4 is not a contract that's specifically enforceable. We've
5 discussed this in our brief.

6 One of the cases they rely on, the Thayer case,
7 involves a dealership contract. What they're saying is, and
8 they're right, you can't enforce a contract that has
9 affirmative covenants. We don't -- this does not have
10 affirmative covenants, these are negative covenants. The case
11 they rely on, the Thayer case, that's a dealership case where
12 the Court said, I'm not going to enforce this dealership
13 contract between Chrysler and a Plymouth dealer. I'm not
14 going to decide who's -- whether or not there's going to be
15 cars that are sold, what prices you're going to maintain, and
16 so forth. This is not that kind of contract.

17 THE COURT: Let's explore that in somewhat greater
18 detail just for a moment.

19 MR. WILSON: Fine.

20 (Pause)

21 MR. WILSON: That would be, I think it's 526.

22 THE COURT: Yes.

23 MR. WILSON: 525 is the one that --

24 THE COURT: Yes, 526 second subdivision 5.

25 MR. WILSON: Correct. If I have that.

26 THE COURT: Is this a -- does this fall under that
27 subsection?

28 MR. WILSON: No.

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1 THE COURT: Why?

2 MR. WILSON: Because that subsection talks about
3 contracts which would not be specifically enforced. And the
4 cases that they've cited for that, in fact, I'm familiar with
5 those cases and those are cases where you cannot enforce an
6 affirmative covenant to do an act. The Thayer case that I was
7 talking about.

8 THE COURT: Oh I see, that's what you're talking
9 about. That's why you refer to that. I understand your
10 argument.

11 MR. WILSON: Okay. That's it. As far as the
12 collusive appeal argument. You looked at the provision
13 yesterday. You saw how it was construed. At the time it was
14 signed there was an appeal pending; it went forward. When
15 that was over the plaintiff appealed again. Mr. Armstrong
16 appeared. He appeared pro per, and he appeared through
17 counsel, and he won. And all you need to do to know that is
18 to look at the official cite of that decision which is 232
19 Cal.App. 3d 1060, and I believe it's on page 1061 that Mr.
20 Armstrong's appearance shows.

21 THE COURT: Does that conclude your argument?

22 MR. WILSON: That concludes it. I thank you for
23 your patience.

24 THE COURT: Mr. Greene?

25 MR. GREENE: Good morning, Your Honor.

26 THE COURT: Go right ahead with your argument any
27 time you're ready, sir.

28 MR. GREENE: Yes, sir.

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1 (Pause)

2 MR. GREENE: There are a number of infirmities that
3 the agreement suffers from standing on its own. When one
4 seeks to enforce the agreement in a court of equity and
5 through the apparatus of an injunction for a specific
6 performance, the infirmities that exist on its face increase.

7 In order for the plaintiff to be entitled to
8 injunctive relief it has got to show that it is going to
9 suffer irreparable harm and that the harm that it's going to
10 suffer tips in its favor as opposed to the harm that the
11 opposite party might suffer.

12 In this case, what's the harm of which Scientology
13 complains? They complain that Armstrong has filed
14 declarations under penalty of perjury in judicial proceedings
15 that are ongoing. It raises the issue what is the purpose of
16 litigation? The purpose of litigation is the ascertainment of
17 the truth, and that is to be accomplished by the clash by the
18 -- the disciplined clash of opposing viewpoints. The purpose
19 of this --

20 THE COURT: That was all true before the December
21 1986 agreement, wasn't it? In other words, that's the way
22 litigation worked even in 1985. Isn't that right?

23 MR. GREENE: Throughout our history that's how --
24 what litigant -- my understanding of what litigation has been.

25 THE COURT: So that must mean that the parties
26 entered into the December 1986 agreement with that in their
27 contemplation and the language of the December 1986 agreement
28 must be for the purpose of prohibiting exactly that kind of

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1 behavior; right?

2 MR. GREENE: Looking at it strictly from the
3 perspective of the parties, yes. That does not take into
4 consideration the higher interest and values of the public and
5 of the judicial system. Yes, certainly that's correct with
6 respect to the parties. The case, Fong versus Miller cited in
7 our brief talks about illegal contracts and talks about the
8 analysis that a Court has to make when presented with the
9 question of whether or not a contract is void for illegality,
10 and makes reference to the fact that there is a higher
11 interest, and that is that the public whose welfare demands
12 that certain transactions be discouraged.

13 As in this case. Any time there is a dispute
14 between parties that centers around an illegal contract, the
15 party that's bringing the case into court is complaining of
16 being -- of the other side being unjustly enriched. And
17 that's what happens, is happening here. But that's not what
18 the -- the heart of the analysis that is most important
19 addresses.

20 The analysis, what the analysis addresses is that
21 the courthouse doors are closed ab initio to those who would
22 seek to use judicial process to enforce something that is
23 illegal.

24 THE COURT: Yes, but the question is, is the
25 agreement illegal or unlawful?

26 MR. GREENE: That certainly is one of the questions.

27 THE COURT: And what's the answer to that question
28 and --

1 MR. GREENE: Yes, it is.

2 THE COURT: -- why. Why?

3 MR. GREENE: The reason that it's illegal and
4 unlawful is because in its various components it was designed
5 and intended to suppress evidence that was adverse to
6 Scientology, to suppress evidence in the proceeding that took
7 place before Judge Breckenridge. Specifically, in Judge
8 Breckenridge's opinion references --

9 THE COURT: You say it was designed to suppress
10 evidence that came out in the case before Judge Breckenridge?

11 MR. GREENE: Indeed.

12 THE COURT: Okay. Would --

13 MR. GREENE: That is one of the -- one of its
14 purposes.

15 THE COURT: Would they be, would some litigant who
16 was interested -- sit down, counsel. Would some litigant who
17 was interested in what happened before Judge Breckenridge be
18 able to get the content of the proceedings before Judge
19 Breckenridge?

20 MR. GREENE: No.

21 THE COURT: Why?

22 MR. GREENE: Because the file is sealed.

23 THE COURT: Wouldn't that order be itself subject to
24 attack or an attempt to modify it?

25 MR. GREENE: Certainly, and that's what the
26 Armstrong appellate decision in part was about.

27 THE COURT: But that doesn't have anything to do
28 with Armstrong's preparing affidavits or declarations or

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1 consulting with Mr. Yanny or doing any of the acts that Mr.
2 Wilson catalogued here, does it?

3 MR. GREENE: No it doesn't. However, there are
4 different values which are similar which apply to the
5 situation of -- of providing declarations. And that's the
6 civil --

7 THE COURT: Give me an example of what you're
8 talking about.

9 MR. GREENE: Civil Code, Section 47 is a privilege
10 to -- in judicial proceedings. In the very case that counsel
11 cites, ITT Telecom, has a discussion of that on page 318,
12 where the discussion is that the function of witnesses is of
13 fundamental importance in the administration of justice.

14 THE COURT: But is there any inhibition on
15 Armstrong's being a witness?

16 MR. GREENE: Yes, there is --

17 THE COURT: Where?

18 MR. GREENE: -- inhibition. At 7-H on page 10 of
19 the settlement agreement.

20 THE COURT: I'm on that page.

21 MR. GREENE: Okay, the very tail end of the -- it
22 starts off, "Plaintiff shall not make himself amenable to
23 service of any such subpoena in a manner which invalidates the
24 intent of this provision."

25 THE COURT: What's your point?

26 MR. GREENE: The point is is that the intent of this
27 entire agreement if you take it in total and you look at the
28 various provisions that apply to the appeal, that apply to the

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1 Zolin case, that apply to the documents in the Armstrong case,
2 the overall intent is to absolutely eliminate the knowledge
3 possessed by Armstrong as expressed and found true in the
4 Breckenridge decision from the face of the judicial birth.
5 That's what the point --

6 THE COURT: How do you --

7 MR. GREENE: -- of this agreement is.

8 THE COURT: What's the foundation for that argument
9 when measured against the following? Somebody simply says,
10 look we think this man, Armstrong, is a treasure trove of
11 information that may be pertinent to the subject matter of a
12 case that we've got filed. They go to Armstrong and say,
13 Armstrong we think you've got some information. Armstrong
14 says, maybe I do maybe I don't but I've -- I'm not willing to
15 discuss it with you short of legal compulsion to require me to
16 do so. In straight terms, if you want my evidence, do what
17 you have to do to compel the production of my evidence,
18 otherwise I'm not going to talk with you about that topic at
19 least. They say, okay fine, here's a subpoena, you're
20 obligated to show up on such-and-such date at such-and-such a
21 time for the taking of your deposition or for the testimony in
22 court. He honors the subpoena as he's legally obligated to
23 do. They ask him whatever questions they're going to ask him.
24 Everything that he knows comes out. How is the contention
25 that you just made subject to being reconciled with that?

26 MR. GREENE: One, were such a subpoena to be served
27 it would immediately be the subject of a Scientology-generated
28 motion to quash.

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1 THE COURT: On what ground?

2 MR. GREENE: On the settlement agreement ground.
3 It's happened. Part of the -- part of the record.

4 MR. WILSON: I'm going to object to that as not
5 being part of the record. There's no evidence of that. It's
6 never happened.

7 THE COURT: And --

8 MR. GREENE: That's -- I'm sorry. I direct the
9 Court's attention to Roman Numeral I-CC --

10 THE COURT: But that's another case. If somebody
11 tries to prevent Armstrong from testifying then they, based on
12 the assertion that he's entered into an agreement not to
13 testify, the content of the agreement is going to have to come
14 up and he's, some judge is going to have to make a ruling;
15 right?

16 MR. GREENE: Some judge will have to make a ruling.
17 That's correct.

18 THE COURT: Okay.

19 MR. GREENE: And that's -- and that's -- but that's
20 also assuming that Armstrong will honor the agreement, that
21 Armstrong as an independent human being will say, you know, I
22 will -- I will show up and testify as opposed to saying I know
23 what's going to happen, I know what the kind of response is
24 going to be through Scientology if I don't. And that's the
25 part of the onerousness of this agreement, Your Honor, is that
26 it can't be looked at in isolation. It's got to be looked at
27 in its context.

28 And it's one of seventeen, according to what's in

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1 evidence, and that includes individuals that did not have any
2 litigation with Scientology that were simply witnesses and
3 that were witnesses who were credited as being truthful by
4 Judge Breckenridge, who were given money not to provide
5 testimony in the future.

6 MR. WILSON: Your Honor, I object to that argument.
7 There's no evidence of where they were witnesses or --

8 THE COURT: Let's --

9 MR. WILSON: -- that their testimony is credible.

10 MR. GREENE: I'll cite the --

11 THE COURT: But isn't there a distinction between
12 giving testimony on the one hand and voluntary assistance on
13 the other hand?

14 MR. GREENE: Well, yeah the distinction is money.
15 The distinction is whether or not --

16 THE COURT: No, the distinction is not money in the
17 context of the argument that you've made so far. The argument
18 that you've made so far relies on the integrity of the
19 judicial process and the integrity of the judicial process is
20 one which is associated with compelling witnesses to attend
21 and to give testimony. That's testimonial.

22 And what this agreement deals with is something
23 related to but analytically separable from that, that is, the
24 independent and voluntary giving of assistance or cooperation
25 to persons who have interests adverse to Mr. Wilson's client,
26 period. Go ahead.

27 MR. GREENE: One, the distinction is that in order
28 to compel testimony and to be able to deal with law and motion

1 obstruction, it requires money. So it put the person who is a
2 litigant and who is not financed by an insurance company at a
3 distinct disadvantage. And it also has the same effect --

4 THE COURT: You don't represent any of those people,
5 you just represent Armstrong.

6 MR. GREENE: That's correct. Right now that's
7 right, I do represent Armstrong before this Court. To further
8 answer your question, in the case of People versus Loaiasis,
9 what the witness did in that case was to say that he would do
10 everything in his power to avoid testifying. Certainly there
11 is the compulsion that's attendant upon a subpoena. But that
12 does not mean that an agreement to do everything in my power
13 does not constitute an agreement to avoid attending a judicial
14 proceeding.

15 And that's what the point it. That's the parallel.
16 Is that as in Loaiasis -- and of course that's a criminal
17 case; you know, the complaining party is not the plaintiff,
18 the People of the State of California is the plaintiff. And
19 that's what the holding was in Loaiasis. The witness signed
20 an agreement to do everything in his power to avoid
21 testifying. And of course in a criminal case the witness
22 would be subject to the subpoena power of the Court. That did
23 not dissuade the California Supreme Court from condemning the
24 agreement in Loaiasis wherein the individual said that he'd do
25 everything in his power to avoid testifying.

26 The Court may say, well there's a distinction here,
27 there's a distinction between a criminal case and a civil
28 case. I submit to the Court that based on the findings in

1 Judge Breckenridge's opinion that there is a criminal conduct
2 that is involved in Armstrong's case. There was criminal
3 conduct of which he has firsthand knowledge.

4 So the -- the point is is that when you look at the
5 extremely broad provisions of the agreement that make it
6 notice of what's prohibited, very very difficult on one hand.
7 And you look at what the purpose of the agreement is on the
8 other. Let me review it if I may for a moment.

9 We talked yesterday about the -- as Your Honor put
10 it, whether or not Armstrong agreed to take a die on the
11 appeal. The history is that Judge Breckenridge's decision was
12 filed on June 22nd, 1984. On August 23rd there was a notice
13 of appeal. Then on -- August 23rd, 1984 there was notice of
14 appeal. Then on December 11, 1986 there's the dismissal of
15 Armstrong's cross complaint.

16 At the same time there's a side agreement between
17 Michael Flynn and the Scientology lawyers that agreed to limit
18 any damages that Scientology could obtain were the case
19 reversed on appeal to twenty-five thousand and one dollars
20 (\$25,001). Additionally, there was an indemnification
21 agreement whereby the Scientology lawyers agreed they would
22 indemnify Flynn who in turn would indemnify Armstrong in the
23 event that there was a retrial after a reversal on appeal
24 wherein Scientology prevailed.

25 Then shortly thereafter, on December 18, 1986 the
26 appeal was dismissed as premature, because the Court of
27 Appeals said if there's a cross complaint it's not ripe for
28 determination. Then on January 30th, 1987 there's the

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1 unopposed motion to withdraw Judge Breckenridge's decision.
2 Unopposed as it was it was denied on February 2nd, 1987 by
3 Judge Breckenridge. Then on February 9, 1987 there's the
4 second notice of appeal.

5 At that point the provisions kick in and Armstrong
6 is by the terms of the agreement set forth in paragraph 4-B
7 prohibits --

8 THE COURT: Hang on; 4-B?

9 MR. GREENE: Yes.

10 THE COURT: Just a second. I've got it. Yes.

11 MR. GREENE: Okay.

12 THE COURT: Yes. Go ahead.

13 MR. GREENE: He's prohibited from opposing it.

14 That's collusive. And I submit to the Court that that
15 collusion, that domination of both sides of litigation in
16 order to be -- to get a pre-intended result is evidence of
17 what the overall intent of this agreement is. Not only with
18 respect -- I mean, not with respect to Armstrong's litigation
19 because it was completed, but with respect to litigation that
20 Scientology was involved in otherwise. Because anybody who
21 reads Breckenridge's decision can't help but note it's one of
22 the most scathing condemnations that I've ever read that's
23 been written by a judge. And Judge Breckenridge is a -- he's
24 a very well respected judge. Current edition of CALJIC is
25 dedicated to him.

26 So when you take the matter of setting of the
27 collusive appeal where Scientology can engineer the
28 elimination of the Breckenridge decision, when you take Judge

1 Breckenridge crediting of Armstrong and the witnesses in the
2 protracted litigation in front of him as being credible, and
3 when you take Judge Breckenridge's condemnation of Scientology
4 as -- as -- of L. Ron Hubbard being a pathological liar, of
5 Scientology being a schizophrenic organization that
6 systematically abuses the civil rights of its members, where
7 findings were made about the wholesale destruction of
8 documents in anticipation --

9 MR. WILSON: I object to this, Your Honor.

10 MR. GREENE: -- of raids by the FBI --

11 MR. WILSON: This is --

12 THE COURT: Just a second. What's your objection?

13 MR. WILSON: It's not in the record.

14 THE COURT: The Breckenridge --

15 MR. GREENE: I'll cite the judge.

16 THE COURT: The Breckenridge decision is in the
17 record. That's what he's talking about. Go ahead with your
18 argument. To the extent that anything that he says deviates
19 from the strict text of the Breckenridge decision I'll
20 disregard it.

21 MR. GREENE: Certainly. And I'm not deviating.

22 THE COURT: Go ahead. What's the purpose of it
23 though? That wasn't what you told us all that you were going
24 to use the Breckenridge decision for. You're not expecting to
25 adopt, for example, his -- his findings as though they were
26 proven in this case, are you?

27 MR. GREENE: It's collateral estoppel. The parties,
28 Armstrong and -- and Scientology are the same here as they

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1 were there. And so this Court is able to look to the decision
2 of Judge Breckenridge in that regard. Yes.

3 THE COURT: All right.

4 MR. WILSON: Your Honor, my understanding of your
5 ruling when you admitted the Breckenridge decision is that it
6 was for background.

7 MR. GREENE: Oh, this is background.

8 THE COURT: I think you better circumscribe your
9 argument on this point, Mr. Greene. I don't think it's likely
10 to be very helpful in the decision process.

11 MR. GREENE: Further is the -- are the provisions
12 that in the settlement agreement that apply to the case of
13 United States versus Zolin, that involve --

14 THE COURT: What did -- which settlement, which case
15 did the agreement settle? Was it case 420153?

16 MR. GREENE: The cross complaint in that case, yes.

17 THE COURT: 420153?

18 MR. GREENE: Yes.

19 THE COURT: Okay.

20 MR. GREENE: Part of Armstrong's obligation pursuant
21 to the settlement agreement were also to help Scientology
22 retrieve documents that were part of litigation in United
23 States versus Zolin. United States versus Zolin is a matter
24 where ultimately there was a finding that Scientology's
25 assertion of the attorney-client privilege should be set aside
26 because of Evidence Code, Section I believe it's 956, the
27 prime fraud exception.

28 And so when you take that, when you take -- when you

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1 put all of these matters together, when you put them together
2 and in addition you look at Armstrong's obligation to avoid
3 service of process and you can -- not amenable to service of
4 process is susceptible of saying you should not be -- you
5 should avoid service of process.

6 Judge Geernaert, when he reviewed this agreement
7 asked a question on the record, on page 22 of the transcript
8 of his proceedings that took place on December 23rd, 1991,
9 said what according to this agreement, what if a process
10 server comes up to Armstrong in a restaurant? What is he
11 supposed to do? Jump up and run away? What's required to
12 comply with this agreement?

13 THE COURT: What's your theory? What is required to
14 comply?

15 MR. GREENE: What is he required to do?

16 THE COURT: Yes.

17 MR. GREENE: According to the spirit of this
18 agreement he is required to avoid service of process at all
19 costs. He is required, he knows that if some lawyer wants to
20 subpoena him and take testimony from him he should run. He
21 should be on the lookout and he should evade service of
22 process. That's what our position is with respect to that.

23 So the harm that Scientology complains of is that
24 there is going to be testimony that if pursuant to subpoena
25 would come out anyway, then -- Scientology complains that
26 there are people in litigation that -- against it, would have
27 -- they -- Scientology complains that they would have access
28 to Armstrong as a witness. That's what the complaint is.

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1 That's what the harm is.

2 What's the harm as to Armstrong? As to Armstrong
3 there -- the -- the -- one of the harms is the complete
4 suppression of his First Amendment right to free speech. Were
5 this Court to issue an injunction without any question that
6 would fall within the definition of being a prior restraint.
7 A prior restraint on the right to free speech, even for a day,
8 constitutes irreparable injury.

9 THE COURT: What was the -- what if a person said --
10 well let's do it a little differently. Your theory then is
11 that all confidentiality agreements are subject to
12 invalidation because they are inhibitions on free speech. Is
13 that it?

14 MR. GREENE: No, it's not as broad as that.

15 THE COURT: Doesn't that have to be your point?

16 MR. GREENE: Can I make the free speech argument
17 without --

18 THE COURT: Sure.

19 MR. GREENE: -- taking that position?

20 THE COURT: Sure. Let's see, I don't know whether
21 you can plausibly but --

22 MR. GREENE: Right.

23 THE COURT: -- go ahead and --

24 MR. GREENE: And that's what your question is.

25 THE COURT: -- and make it, and let's see how it
26 goes.

27 MR. GREENE: Okay. Candidly, yes. I would say that
28 based on the free speech argument, if any -- any settlement

1 agreement constrained free speech without a counterbalance,
2 that would be true. The distinction is, what's -- what's the
3 other interest? What's the interest that -- that balances
4 against Armstrong's free speech right?

5 Here we have the public interest in truthful
6 litigation proceedings. The case that the plaintiff has
7 cited, the ITT Telecom Products case, that is a trade secret
8 case that involved an employee agreement whereby the
9 individual was not supposed to disclose trade secrets which
10 have been recognized as a constitutionally protected
11 intangible property interest. So that there is a -- there's a
12 concrete balance.

13 And so then by -- may I anticipate what the logical
14 question would be? I think you'd ask me, well Mr. Greene,
15 didn't -- isn't that what Scientology bought here? Didn't --
16 didn't -- isn't this what they purchased? And my answer is,
17 you can't buy it. What Scientology purchased was the
18 settlement of a cross complaint where they stood to lose a
19 very substantial amount of money. And that was what they
20 purchased.

21 What also was involved are all of these provisions
22 which are void as a matter of public policy, which are void as
23 a matter of constitutional interpretation as being
24 impermissively over-broad and vague. And that should be
25 severed from the agreement because they are illegal.

26 The Wakefield case you covered pretty well except
27 what you did not state on the record was that Marjorie
28 Wakefield was not even a litigant in that case. That case was

1 simply an appeal by a newspaper organization of a -- of a
2 decision of the trial court saying you cannot -- you cannot
3 enter into contempt proceedings because Wakefield has
4 disclosed what she was not supposed to disclose that were held
5 in secret. That's what -- that's what that determination
6 stands for.

7 And you read Wakefield and Wakefield discusses that
8 -- that there was a preliminary injunction. And I know this
9 because for a while I represented Marjorie Wakefield. There's
10 a preliminary injunction where Marjorie Wakefield was not even
11 represented by counsel. And that was also in a secret
12 proceeding.

13 MR. WILSON: Your Honor, objection; that's not in
14 the record.

15 MR. GREENE: Yes, it is. It's in my declaration
16 that's in evidence.

17 THE COURT: Let's just go ahead, can we? I'm not
18 much interested in more discussion of the Wakefield case. It
19 doesn't seem to me that that's likely to be fruitful. I think
20 what you really have to do is to focus your argument on what
21 principal reason exists for the invalidation of the
22 contractual provisions that are involved in this case.

23 MR. GREENE: Okay. The principal reasons are these.
24 One, that what we have here is a compromise of litigation that
25 includes provisions that are designed to conceal facts from
26 the Court and from courts in the future. It is our position
27 that we should not even be here before Your Honor because
28 pursuant to paragraph 20 of this agreement, jurisdiction was

1 retained to enforce it by Judge Breckenridge. Scientology
2 sought last fall to do just that, relying on that provision.
3 Scientology lost --

4 THE COURT: Well, but your client took a position in
5 that order, in that -- you're talking about the proceeding
6 before Judge Geernaert?

7 MR. GREENE: Yes.

8 THE COURT: I thought your client took the position
9 before Judge Geernaert and Judge Geernaert agreed that, pardon
10 me, that jurisdiction had not been retained or reserved.

11 MR. GREENE: No, that's not quite -- the position
12 was that because Judge Breckenridge, on December 12th ordered
13 that the settlement agreement be filed and that it never was
14 filed, that for Scientology to seek to enforce the agreement
15 as though it had been made a judgment or order of the Court
16 conferred no jurisdiction on the Court. And that's precisely
17 --

18 THE COURT: So what should have happened? How would
19 the plaintiff try to enforce this agreement?

20 MR. GREENE: The way that they should have -- they
21 had the opportunity. Judge Geernaert said to them, would I
22 need to make this enforceable is an evidentiary hearing. And
23 the plaintiff declined and said, well we don't want an
24 evidentiary hearing. And so they had their opportunity. They
25 had their bite of the apple and they blew it. And now they
26 want to come back again and have another bite.

27 Our position is that when Judge Geernaert made his
28 determination that there wasn't any order, that he made

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1 certain factual findings necessary to that. On page 52 of the
2 transcript he says, "So my belief is Judge Breckenridge, being
3 a very careful judge, follows about the same practice."

4 And if he had been presented with that whole
5 agreement and if he had been asked to order its performance he
6 would have dug his feet in because that is one of the I have
7 seen -- I can't say, I'll say one of the most ambiguous, one-
8 sided agreements I've ever read. And I would not have ordered
9 the enforcement of hardly any of the terms had I been asked to
10 even on threat of, okay, the case is not settled. I know we
11 like to settle cases but we don't want to settle cases and in
12 effect prostrate the court system into making an order which
13 is not fair or in the public interest.

14 THE COURT: Incidentally, I would counsel both sides
15 if this case goes beyond this stage, not to try to agree to
16 any settlement. I think you should just go ahead and try your
17 lawsuit if you've got any lawsuit left. Let the case be
18 resolved by judgment rather than by settlement. I don't think
19 that anybody's interests are served by settlement. One side
20 takes the position that the settlement agreement has
21 essentially no meaning in that it was -- that its provisions,
22 substantially repeated and re-repeated and re-repeated, are
23 unenforceable.

24 And the other side takes the position -- that's the
25 defense position. The plaintiff's position is that the
26 purpose of the agreement is different from that purpose that
27 the defendant contends. I think under those circumstances you
28 have some substantial difficulty in dealing with agreements

1 and dealing with each other. And if the case were my case I
2 would most probably go ahead and try the case and not try to
3 engage in settlement. Go ahead.

4 MR. GREENE: Additionally, going to the question of
5 irreparable injury is the fact that in the agreement provision
6 is made for liquidated damages. The parties in advance looked
7 at the possibility that there would be some kind of violation
8 and provided for that in advance. And therefore, there's an
9 adequate legal remedy which would take the case out of being
10 appropriate for injunctive enforcement.

11 THE COURT: Do I have to make a determination
12 concerning, pardon me, the adequacy of the liquidated damage
13 remedy?

14 MR. GREENE: No.

15 THE COURT: Why?

16 MR. GREENE: Because one, that's not before the
17 Court. Whether or not the liquidated damages provision is
18 adequate is a determination for the trial court. The fact
19 that there is a provision for liquidated damages on its face
20 provides the relief that is appropriate in this case.

21 Now again, I mean it's -- it goes -- that takes your
22 argument earlier of the parties charting what's going to
23 happen. I mean they made that determination. They made that
24 agreement and said okay, if this is what -- if there's a
25 violation this is what a remedy for that violation is going to
26 be.

27 THE COURT: Well, how do I handle it then? Am I
28 supposed to -- am I not supposed to -- am I not supposed to

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1 adjudicate or make a determination about whether non-equitable
2 remedies are adequate?

3 MR. GREENE: Well, by --

4 THE COURT: There is --

5 MR. GREENE: -- its existence, yeah, you make -- you
6 make the -- you say, yes there is an adequate remedy here
7 because there is -- there is the liquidated damages provision.
8 That is the same --

9 THE COURT: Well, I have to make a determination
10 about whether that liquidated damages provision is adequate.

11 MR. GREENE: No, because the parties have determined
12 that in advance. And there's also --

13 THE COURT: What makes you say that? Let's go to
14 the language of the agreement.

15 MR. GREENE: We're looking at page 8 at the top of
16 the agreement.

17 THE COURT: Hang on for just a second. Okay.

18 (Pause)

19 THE COURT: What do you contend that that section
20 does? You're talking about this material -- it's in the tag
21 end of paragraph of -- this is 7-D, isn't it Mr. Greene?

22 MR. GREENE: Right. Yes, it is.

23 THE COURT: Okay. You contend that this liquidated
24 damage provision does -- has what effect then on my
25 responsibilities and on the rights of your client?

26 MR. GREENE: The effect that it has is to provide an
27 adequate legal remedy which would obviate the need for
28 injunctive relief.

1 THE COURT: But the question I had asked you was
2 whether or not I have to make an independent determination
3 about whether the amount of money referred to here is
4 adequate. And your statement was, no you don't, the parties
5 have agreed that it is adequate. And I wanted to get to this
6 section of the agreement so that I could find what language or
7 construction of the agreement you look to for support of that
8 latter assertion.

9 MR. GREENE: Well, the language -- it's a -- its own
10 language. That releasees would be entitled to liquidated
11 damages in the amount of fifty thousand dollars (\$50,000) for
12 each such breach. And fifty thousand dollars (\$50,000) I
13 think on its face quite adequate to deal with the violations
14 that are complained of here.

15 THE COURT: Do I have to make that determination
16 about whether it is adequate? In other words, are you
17 changing your position? Because you now said, quote "I think
18 on its face --

19 MR. GREENE: Right.

20 THE COURT: -- fifty thousand dollars (\$50,000) is
21 adequate," end quote more or less.

22 MR. GREENE: Well. The reason --

23 THE COURT: I want to know whether you're changing
24 your position from the earlier position which is if the
25 agreement constitutes an explicit acknowledgement that this is
26 an adequate --

27 MR. GREENE: Going down further, to answer you
28 directly, the language is the amount -- at the end of

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1 paragraph D, the last two sentences.

2 THE COURT: All right.

3 MR. GREENE: The amount of liquidated damages herein
4 is an estimate of the damages that each party would suffer in
5 the event that this agreement is breached.

6 THE COURT: All right.

7 MR. GREENE: The reasonableness of the amount of
8 such damages are hereto acknowledged by plaintiff.

9 THE COURT: Plaintiff is your client?

10 MR. GREENE: Right.

11 THE COURT: And what --

12 MR. GREENE: And so that's -- that -- that's -- my
13 answer is that the parties have made the determination between
14 themselves that yes --

15 THE COURT: Okay. Go ahead.

16 MR. GREENE: And Scientology drew up this agreement;
17 Armstrong didn't draw up the agreement.

18 (Pause)

19 THE COURT: Any other arguments?

20 MR. GREENE: Yes. Also going to the issue of the
21 irreparability of any harm is the delay. The violations of
22 which Scientology complains commenced in June 1991. No effort
23 at seeking any kind of relief occurred until October, almost
24 six months later. If it's -- if the harm is so bad and -- and
25 is of such tremendous import, the assertion of that is
26 undermined by the delay attendant upon the effort made to seek
27 relief.

28 (Pause)

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1 MR. GREENE: The requirement restricting Armstrong's
2 employment, that only has any type of judicial imprimatur in
3 non-competition agreements. All such agreements are
4 circumscribed as to geography, as to time. None such
5 agreements are enforceable on a completely open-ended basis as
6 here. So that is an additional harm which would be suffered
7 by Armstrong in the event that the Court were to issue
8 injunctive relief.

9 THE COURT: Well, do I have any evidence at all that
10 would show me what the gravity of the potential harm is?

11 MR. GREENE: Not -- not aside from precluding
12 Armstrong from exercising his protected right.

13 THE COURT: To what?

14 MR. GREENE: Employment one, free speech two,
15 freedom of association three. And that -- those are specific
16 to Armstrong and do not incorporate the public interest issues
17 which we contend are paramount and stand above and are more
18 important than the interests of the parties here. That's
19 really the point, because what we have is not like in the
20 Hoffman case which is a federal case that counsel cited
21 involving the resolution of some litigation before the EEOC.

22 This is not EEOC litigation, this is litigation
23 involving an organization that's been judicially found to
24 systematically involve itself in heinous acts. And somebody
25 who has a tremendous amount of first-hand information with
26 respect to those, one. And then too, part of a larger scheme
27 and effort to subject all individuals who share Armstrong's
28 firsthand knowledge from being able to provide that knowledge,

1 to whit the agreements that were submitted in support of
2 Scientology's efforts to preliminarily enjoin the Aznarans
3 which are in evidence. To whit the enumeration of individuals
4 on the settlement agreement that Armstrong's name is on.
5 That's not the one that is the basis of the sought-for relief
6 here but is the other settlement agreement that is in
7 evidence. And that's the one that enumerates some seventeen
8 people, including people who did not have any lawsuits.

9 THE COURT: Okay.

10 MR. GREENE: Those that did not have lawsuits
11 included Laurel Sullivan, Nancy Dincalci and Kima Douglas.
12 Each one of those witnesses was judicially credited as being
13 believable by Judge Breckenridge.

14 THE COURT: So what?

15 MR. GREENE: So it goes to show what is happening.
16 It goes to show what the point of the plaintiff's exercise in
17 creating these agreements was. It was to eliminate witnesses.
18 It was to suppress evidence and ultimately to obstruct
19 justice. Somebody -- people are going to always have to be
20 legally required to honor subpoenas. So it doesn't really
21 matter whether somebody can be subpoenaed or not.

22 THE COURT: Why?

23 MR. GREENE: The point -- the reason why is because
24 the point is is that the individual is being asked, Armstrong
25 here, is being asked to not provide any testimony, to do
26 everything in his power as in Loaiasis to avoid providing
27 testimony. So it's really a --

28 THE COURT: It's different from Loaiasis. Loaiasis

1 was really a testimonial case. This case is a cooperation
2 case. Isn't that the way you see the text of the agreement?

3 MR. GREENE: This is a cooperation case?

4 THE COURT: Yes.

5 MR. GREENE: No, the -- this isn't a -- the -- part
6 of the -- the lion's share of the evidence that's been pointed
7 to by the plaintiffs are declarations. That's evidence.

8 THE COURT: None of it though was testimonially
9 compelled. All of it was volunteered.

10 MR. GREENE: It still could have been compelled. I
11 mean, the Yanny litigation --

12 THE COURT: But that's a different case.

13 MR. GREENE: -- is a good example.

14 THE COURT: That's a different case, is it not?

15 MR. GREENE: To some extent, yes.

16 THE COURT: So it's one thing to compel testimony
17 and have a witness testify; it's another thing to have
18 somebody volunteer information and as appears I think
19 reasonably persuasively from the text and format of the
20 declarations, himself draft a declaration.

21 MR. GREENE: Certainly can't argue that. He
22 certainly did draft that one declaration, that's -- that's in
23 long hand.

24 THE COURT: There's a face page put on it but the
25 drafting of it --

26 MR. GREENE: But the declaration --

27 THE COURT: -- was done by the --

28 MR. GREENE: -- is in long hand. That's correct.

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1 THE COURT: And I'm talking about --

2 MR. GREENE: There's no question.

3 THE COURT: And I'm talking about another typed
4 declaration too. The declaration is typed apparently by Mr.
5 Armstrong himself on his own typewriter. It appears to be the
6 same typewriter that the letter to Lieberman was written on.

7 MR. GREENE: The dot matrix printer.

8 THE COURT: Yes. And you and I are in agreement
9 that he drafted that himself voluntarily and spontaneously.

10 MR. GREENE: The Lieberman letter and the
11 declaration that had type identical to that, yes.

12 THE COURT: All right. Is there a difference in
13 principal between testifying on the one hand and doing those
14 things on the other?

15 MR. GREENE: No.

16 THE COURT: Why?

17 MR. GREENE: The end result is the same. The end
18 result is sworn testimony in a proceeding that's designed to
19 find out what's true.

20 THE COURT: Okay. Any other arguments?

21 MR. GREENE: Yes.

22 THE COURT: Proceed.

23 MR. GREENE: Just a further example of the
24 suppression of evidence question has to do with the lawsuit
25 that involved information that Armstrong knew that it was out
26 of state. The point is that the money that it takes to
27 litigate is horrendous. And if the litigant has money to burn
28 then that person is not so likely to be harmed by this

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1 agreement and those like it as is someone who has the
2 resources. But even then there's no guarantee. In the Yanny
3 case Judge Cardenas said, Yanny you are not enjoined from
4 looking to Armstrong to help defend yourself in the lawsuit
5 that Scientology has brought against you.

6 Scientology goes and --

7 THE COURT: What was the date of that? Let's take a
8 look at --

9 MR. GREENE: I believe that's --

10 THE COURT: -- exactly what Judge Cardenas
11 determined.

12 MR. GREENE: -- August 6th, 1991.

13 THE COURT: Let's find that and let's just see what
14 exactly Judge Cardenas did.

15 (Counsel Colloquy)

16 THE COURT: Just make your reference to any -- to
17 wherever in the record you contend that exists, Mr. Greene.
18 Let's study it together.

19 MR. GREENE: I was conferring. I'm sorry, Your
20 Honor. You want me to direct the Court to where we -- to
21 where it is, right?

22 THE COURT: Right.

23 MR. GREENE: Just a moment.

24 (Counsel Colloquy)

25 MR. GREENE: That would be, I believe, item no. 5 of
26 plaintiff's evidence.

27 THE COURT: Okay, just a second.

28 MR. GREENE: Which was, I believe, Exhibit 1-E to

1 plaintiff's request for judicial notice.

2 THE COURT: Well, it is in the record before me now?

3 MR. GREENE: Yes.

4 THE COURT: If so, which of the items that plaintiff
5 introduced was it?

6 MR. GREENE: I believe it was no. 5, the fifth one.

7 THE COURT: The transcript of Religious Technology
8 versus Yanny?

9 MR. GREENE: That's the one.

10 THE COURT: Okay. Just a second.

11 (Pause)

12 MR. WILSON: Your Honor, that's only a partial
13 transcript. Sorry for interrupting.

14 THE COURT: You introduced it. He's making use of
15 it.

16 MR. WILSON: Yes, I know and I -- we introduced it
17 only for one purpose. I think that you did introduce the full
18 transcript somewhere.

19 THE COURT: Tell me where it is.

20 MR. WILSON: I can give you the cite, Your Honor.

21 THE COURT: All right.

22 MR. WILSON: It's Declaration of Graham E. Berry --

23 THE COURT: Is that in the record? I'm not going to
24 refer to anything that's not in the record.

25 MR. WILSON: I think -- I can't tell you that, Your
26 Honor.

27 THE COURT: Martha?

28 THE CLERK: No, that was not.

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1 THE COURT: I think Mr. Greene has the right to
2 refer to items in the record. Mr. Greene, make your
3 reference. Tell me --

4 MR. GREENE: Yes. Again --

5 THE COURT: -- exactly where --

6 MR. GREENE: -- as my notes reflect from yesterday,
7 it was item 5.

8 THE COURT: All right. So that went along with the
9 request for judicial notice of the other side, right?

10 MR. GREENE: Yes. And also --

11 THE COURT: Just a second. What was the date of the
12 filing of the request for judicial notice?

13 MR. WILSON: May 7th, '92.

14 THE COURT: Okay.

15 MR. WILSON: The cover sheet says Evidence Submitted
16 in Support of Plaintiff's Amended Motion for Preliminary
17 Injunction.

18 THE COURT: All right, thank you.

19 (Pause)

20 THE COURT: How much more argument do you have?

21 MR. GREENE: Ten or fifteen minutes.

22 THE COURT: Oh, I think you better reduce it
23 somewhat.

24 MR. GREENE: Okay. I mean, I just --

25 THE COURT: I'll tell you what. I'll give you
26 another ten minutes from now.

27 MR. GREENE: While we're looking?

28 THE COURT: Unless you can -- if you want to refer

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1 to a piece of evidence, unless you can bring it to my hand I
2 think what I have to do is take the time necessary to find it
3 so that I can make a determination about whether what you're
4 saying coheres with the content of the evidence. You just
5 govern yourself accordingly.

6 MR. GREENE: All right.

7 THE COURT: Or if you want to shortcut things, you
8 hand it to me.

9 MR. GREENE: Well, I would like to hand it to you.
10 I don't have it in front of me.

11 THE COURT: That's entirely up to you then.

12 MR. GREENE: I have my notes so that I'm --

13 THE COURT: Yes, you can organize --

14 MR. GREENE: I wish I could but I can't.

15 THE COURT: You can organize your presentation any
16 way you want.

17 MR. GREENE: What I can do and Your Honor can check
18 if I'm accurate or not, it's just -- is simply quote you --

19 THE COURT: All right, I've got it I think. I have
20 it. I've got it.

21 MR. GREENE: Okay. Page 5.

22 THE COURT: Page 5 of the transcript?

23 MR. GREENE: Yes, sir.

24 THE COURT: Well, I've only got one page here. Am I
25 looking at the wrong document? What I'm looking at is Exhibit
26 1-D, the Request for Judicial -- 1-E, the Request for Judicial
27 Notice. Let me just see. No, that's not what I'm looking at.
28 Actually, I'm looking at a single page.

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1 MR. WILSON: That's all we submitted, Your Honor.

2 MR. GREENE: Judge I just -- just for the record,
3 yesterday counsel said that we were -- that were -- that we
4 want to submit transcript of the proceeding before Judge
5 Cardenas.

6 THE COURT: No, he said he was making reference to
7 Exhibit 1-E to the Request for Judicial Notice of Plaintiff,
8 transcript of Religious Technology versus Yanny, August 1991.
9 The Exhibit 1-E that I'm looking at is Exhibit 1-E to a
10 different document; it's Exhibit 1-E to something called
11 Evidence Submitted in Support of Plaintiff's Amended Motion
12 for Preliminary Injunction. That was filed on May 7th, 1992.
13 Please, somebody hand up to me Exhibit 1-E to the Request for
14 Judicial Notice of plaintiff.

15 MR. WILSON: It is the same, Your Honor; I'll hand
16 it up to you.

17 THE COURT: All right. Show it to Mr. Greene and
18 then hand it up.

19 MR. GREENE: Well, it looks like, Judge, there's no
20 point in wasting your time and my argument time. I simply
21 made a mistake in assuming incorrectly apparently that when
22 counsel said the transcript of the Cardenas proceeding on
23 August 6th, that it was the entire transcript.

24 THE COURT: Okay. It just seems to be this one page
25 which --

26 MR. GREENE: And the citation --

27 THE COURT: -- as far as I can tell is --

28 MR. GREENE: -- just is on page 5, line 28 through

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1 page 6, line 3.

2 THE COURT: Go ahead with your argument then, Mr.
3 Greene.

4 MR. GREENE: All right. This case -- another point,
5 I want to address some of the points made by counsel. The
6 Maclean case is not any cited case. That's a slip opinion,
7 it's not a published opinion, it's not anything upon which
8 this Court can rely. The ITT case is a case that involves
9 trade secrets in a property interest protected and
10 traditionally protected by trade secrets. There is no
11 traditional protection for civil and criminal wrongs to be
12 covered up and hidden by settlement agreements. And so I
13 would submit to you that the precedential value of the ITT
14 case is extremely limited.

15 That case also relies on a case cited by counsel but
16 not discussed, In Re Steinberg that involved a movie-maker who
17 made apparently an agreement with a juvenile court judge to
18 make a movie of some kind of program that the Court used or
19 that the Court sponsored or ordered juveniles to participate
20 in and publish it. And then when it -- and the Court in the
21 exercise of its care for the minors said, okay fine, I'll let
22 you do it, but you've got to clear it with me first. And that
23 was the agreement between the Court and the movie-maker. And
24 then the movie-maker apparently didn't -- either didn't like
25 what the judge wanted to restrict him to or just wanted to
26 disregard it and said, no this is not -- I do not want to
27 honor that.

28 What you have there and you don't have here is a

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1 judicial order. It does not exist in this case. And that's
2 why there is the value that -- that balances against -- that's
3 the value in that case that balances against the claimed first
4 amendment exercise.

5 The breadth of the language that the plaintiffs want
6 to enforce is way too much. Counsel says, Judge follow Judge
7 Dufficy's order. Look at Judge Dufficy's order and you follow
8 -- and that tracks the language of the agreement. And so it's
9 the language of the agreement that the plaintiff is asking
10 this Court to incorporate into a court order.

11 There are a number of flaws that I submit are fatal.
12 For example, paragraph 7-E at page 8 requires that Armstrong
13 return all documents which in the future may come into his
14 hands quote "to find in Exhibit A." Well, there is --

15 THE COURT: Is there evidence that this provision is
16 being violated?

17 MR. GREENE: I do not believe that any has been
18 submitted although there may be a -- a -- that's not being
19 claimed although I believe that one of Armstrong's
20 declarations in the Aznarans case attached a document that may
21 fall within whatever the scope of Exhibit A is.

22 THE COURT: Okay.

23 MR. GREENE: Here -- there's no Exhibit A though.
24 That's the point. It's this -- you know --

25 MR. WILSON: If I might interrupt. There's no
26 violation of this that's claimed.

27 THE COURT: All right, go ahead Mr. Greene. I think
28 maybe we might want to devote some attention to some other

1 points.

2 MR. GREENE: Paragraph 7-G at page 10. Armstrong
3 will not voluntarily assist or cooperate with any person
4 adverse to Scientology. The question is, when is somebody
5 adverse to Scientology? Counsel says to you, we need this
6 kind of broad language so that it can be enforced. But the
7 very reason why counsel says they need the language is why the
8 Court can't use it, because in issuing injunctive orders
9 they've got to be -- the order, particularly when it's
10 addressing First Amendment rights has got to be narrowly
11 circumscribed.

12 And having some broad language about Armstrong not
13 assisting or cooperating with somebody adverse to Scientology
14 -- when is a person adverse to Scientology? Is somebody who
15 would -- who would ask a lawyer for assistance in obtaining a
16 court order in a family law proceeding preventing a minor
17 child from being introduced to Scientology, Scientology is not
18 a party. Is that a situation where somebody is adverse to
19 Scientology? You can't tell. And that's what the problem is
20 with the agreement is that it's -- it's too broad.

21 THE COURT: Well, is that one of the contentions
22 that Mr. Armstrong makes, that he wants to engage in this kind
23 of -- kind of guardian of morals, generalized guardian of
24 morals capacity? That he wants to go out and help people in
25 family law matters? Sort of hovers around and does things
26 like that or is it --

27 MR. GREENE: He doesn't have to. It's not -- it's
28 not incumbent upon him in these proceedings to foresee --

1 THE COURT: Well, it's incumbent upon me to balance
2 the -- to balance the hardships. And if hardships are going
3 to be referred to hypothetically, I don't know whether they're
4 actual, concrete threatened hardships or whether they are
5 hardships that simply exist in the ingenuity of a lawyer's
6 mind.

7 MR. GREENE: No.

8 THE COURT: The ingenuity of a lawyer's mind is
9 impressive and I don't mean to deprecate it. But I have to
10 deal with it in a way that's qualitatively different than the
11 way I deal with an attack on the interests of parties as
12 manifested by their behavior or -- or more or less proximately
13 intended behavior.

14 MR. GREENE: It's not in ingenious hypothetical.

15 THE COURT: Why not?

16 MR. GREENE: Gerry Armstrong works for me. I've
17 represented people --

18 THE COURT: Worked for you in what capacity?

19 MR. GREENE: He works for me. I'm Ford Greene and
20 my declaration is in evidence before you in this matter.

21 THE COURT: Works for you in what capacity? I think
22 I need --

23 MR. GREENE: He --

24 THE COURT: -- to ask that again.

25 MR. GREENE: -- staples, he stamps, he copies, he
26 records mail, he addresses envelopes.

27 THE COURT: I thought you were describing a
28 situation in which Armstrong would be an advisor to people in

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1 family law matters concerning the affairs of the plaintiff.

2 MR. GREENE: I am proposing that as an example of
3 what he could do. Okay? Right now, I mean, the family law
4 case where I was -- that my hypothetical is in reality based
5 on pre-dated Armstrong's employment by me. It doesn't mean to
6 say that -- that I wouldn't be asked to do something in the
7 future. And if Gerry Armstrong knows the information about
8 how children are treated in Scientology I would ask him,
9 unless I was otherwise prohibited from doing so.

10 THE COURT: What credence should I give to the
11 assertion that's contained, or is there an assertion in
12 evidence before me that Mr. Armstrong has founded a religion?

13 (Pause)

14 MR. GREENE: You should give credence to that.

15 THE COURT: Is it -- is such evidence before me?

16 MR. GREENE: Not to my knowledge.

17 THE COURT: Okay. Then I shouldn't give credence to
18 anything that's not before me. Go ahead.

19 MR. GREENE: I mean, I know it's been an issue in
20 the Yanny case but I --

21 (Pause)

22 MR. GREENE: One of the points that I'm addressing
23 is that the determination of when somebody is adverse to or
24 aligned against Scientology is a subjective determination.
25 And the very subjectivity of that determination makes an
26 enforceable order impossible. It's impossible to draft
27 something that sufficiently incorporates and that -- or that
28 narrowly -- that -- that properly defines language that's as

1 broad as that. And ultimately the determination of who is
2 aligned against or adverse to is in Scientology's mind. And
3 its subjectivity makes it impossible to enforce as to
4 Armstrong.

5 The similar argument as to -- as to what are his
6 experiences -- talking about seventeen years of a man's life.
7 What are his experiences with Scientology? He is supposed to
8 say, if he goes into therapy he can't talk about what happened
9 in Scientology, when he was in Scientology. And these -- that
10 point in the -- and the free speech point, free association
11 point and the freedom of employment points all relate to the
12 element which has to be satisfied before an agreement can
13 specifically enforced by injunction, which is that it must be
14 fair to the defendant. These provisions are not fair
15 provisions.

16 Moreover, and -- and without any doubt one-sided and
17 unfair is the fact, and it's in evidence before the Court,
18 that Scientology has been free to characterize Armstrong in
19 whatever way it decides as -- as an agent provocateur of the
20 CID of the IRS who was scheming to plant phony documents in
21 Scientology files which then would be discovered by the IRS in
22 conducting a raid.

23 And so Armstrong is supposed to wait around until
24 somebody subpoenas him to be able to address the assault that
25 he has on his reputational interest?

26 THE COURT: Well, would he have to do that or could
27 he just say, I didn't find those, I understand that somebody
28 is saying --

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1 MR. GREENE: No, he couldn't; not by --

2 THE COURT: -- that I did.

3 MR. GREENE: -- the terms of this agreement.

4 THE COURT: Why? Show me --

5 MR. GREENE: Because --

6 THE COURT: Show me where the agreement prohibits
7 that.

8 MR. GREENE: It talks about his experiences in
9 Scientology.

10 THE COURT: Just refer me to line and page if you
11 can --

12 MR. GREENE: Okay.

13 THE COURT: -- so that we can get it.

14 MR. GREENE: Page 7 of the agreement.

15 THE COURT: Yes, sir.

16 MR. GREENE: About two inches down, the line that
17 starts on the left-hand side, "Plaintiff further agrees that
18 he will maintain strict confidentiality --

19 THE COURT: Okay.

20 MR. GREENE: -- and silence."

21 THE COURT: Oh, I see what you mean. So if -- your
22 theory is that somebody might say, listen Armstrong, there
23 were six or seven ashtrays around here and now there are none
24 and we think that Armstrong is the thief. And your view is
25 that Armstrong would have to remain more or less mute --

26 MR. GREENE: No, no. That's -- with all due
27 respect, that's a terrible example and it's not what I mean to
28 convey.

1 THE COURT: Tell me the situation that you're
2 talking about.

3 MR. GREENE: The situation is Scientology in other
4 litigations filed declarations in some cases and papers in
5 others wherein it has characterized Armstrong in the way that
6 I just did. I'm not making it up out of --

7 THE COURT: And your theory is that Armstrong ought
8 to be able to come in to those other lawsuits and say, listen,
9 I understand that somebody's been saying something bad about
10 me, let me tell you what really happened?

11 MR. GREENE: My --

12 THE COURT: Or he ought to be able to say, listen, I
13 understand that somebody is saying something bad about me, I'm
14 not a party to this case but here's some other things that I
15 know about this plaintiff in this case, they are the following
16 things going back to nineteen -- and then you just pick the
17 year you want to start in. And then he elaborates on that
18 information. Which of those things do you maintain that he
19 ought to be able to do?

20 MR. GREENE: Well, I maintain he ought to be able to
21 do both of those things. And the slant that I would put on it
22 --

23 THE COURT: Which of those things do you maintain he
24 ought to be able to do without violating the language you
25 refer to on page 11 of the agreement?

26 MR. GREENE: My point -- my point is that
27 Scientology can't have it both ways. They can't -- they can't
28 enter an agreement like this and then turn around and make

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1 allegations about Armstrong, and then say, hey Armstrong, if
2 you in any way rebut these, you're violating the settlement
3 agreement. That's unfair on its face. It's unfair to
4 Armstrong and it adversely impinges on his reputational
5 interest.

6 THE COURT: Okay.

7 MR. GREENE: It's not fair to have it both ways.

8 THE COURT: At 11:00 o'clock I asked you to conclude
9 your argument in ten minutes. It's now seventeen minutes
10 after 11:00. Are you finished?

11 (Pause)

12 MR. GREENE: Almost finished.

13 THE COURT: Will you be finished by twenty minutes
14 after 11:00?

15 MR. GREENE: Sure will be.

16 THE COURT: All right, that will be double the time
17 that I had originally asked you to keep yourself within. Go
18 right ahead.

19 MR. GREENE: Thank you. Counsel concedes that 7-G
20 is broad. I submit it's incapable of enforcement. Counsel
21 says there are no unclean hands. That's incorrect.
22 Scientology is trying to have it both ways. The very
23 complaint in this case, they make these allegations about
24 Armstrong that are a violation of the very agreement which
25 they seek to enforce. As characteristic of this agreement and
26 characteristic of the way that Scientology does business and
27 wants this Court to cooperate in doing business is to -- is to
28 have it both ways. In our litigation system there are sides

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1 and each side is entitled to fight clean, disciplined and hard
2 against the other side with the best evidence that's available
3 to them. This agreement skews that. This agreement is
4 designed to prevent that so as to provide Scientology with an
5 unfair advantage when people come to court seeking justice
6 because they've been hurt by the practices of Scientology.
7 And appellate cases are replete with examples like that.

8 So Scientology's hands are dirty. We are in a court
9 of equity. They cannot say, Judge, please you know, enforce
10 what we think Armstrong has done wrong but ignore what we have
11 done to invite that.

12 There has not been any argument regarding any
13 ratification of the agreement that were -- that was in the
14 papers. There are cases that we -- but what Mr. Wilson has --
15 has said but not knowing that was going to be addressed I
16 don't have those cases.

17 All of the cases that we cite with respect to the
18 public policy issue, none of them have, talk about how it's --
19 if you can subpoena somebody it makes -- it sanitizes an
20 otherwise illegal agreement. What this agreement is is a
21 payment of money in order to prevent testimony. And that is
22 void as a matter of public policy. And I submit that what
23 this Court should do and what the agreement itself provides
24 for is to find those provisions that Scientology seeks to
25 enforce unenforceable and illegal. And let the rest of the
26 agreement settling Armstrong's cross complaint stand.

27 Finally with respect to the confidentiality of -- of
28 keeping the agreement itself secret. It would be ridiculous

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1 for this Court to issue an order like that when this agreement
2 is a matter of public record. Scientology first, in the
3 inception of this case, went to two judges in Marin Superior
4 Court, first trying to seal the entire proceedings and second,
5 trying to seal the settlement agreement. They failed both
6 times and were told, if you want to sue on the agreement it's
7 got to be a matter of the public record.

8 And so now Scientology says, well Armstrong is
9 violating the agreement and it's ridiculous that it's a matter
10 of public record. It's a matter of public record.

11 THE COURT: Okay. Thank you, Mr. Greene. Mr.
12 Wilson, I have some questions and that would be your rebuttal.

13 Does your client have any interest in keeping the
14 settlement agreement secret, the last point that Mr. Greene
15 made?

16 MR. WILSON: Well, Your Honor, we have an interest
17 in not -- not in keeping it secret any more; it obviously is a
18 matter of public record. We'd like to prevent its wider
19 distribution. But I cannot stand up here and tell you that in
20 fact the agreement isn't a matter of public record.

21 THE COURT: How about Mr. Greene's point that your
22 client's sole remedy was before Judge Geernaert by way of an
23 evidentiary hearing?

24 MR. WILSON: My reply to that, Your Honor, is that
25 the transcript of Judge Geernaert's -- of the hearing before
26 Judge Geernaert is quite extensive, and a review of it makes
27 clear what really happened. The first thing that happened was
28 Judge Geernaert said, well I can't enforce this agreement

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1 without an evidentiary hearing. You parties come back at 2:00
2 o'clock. So they came back at 2:00 o'clock and then the --
3 and then the jurisdictional argument was raised and they spent
4 approximately sixty pages on the jurisdictional argument. And
5 at the conclusion of it Judge Geernaert ruled that he didn't
6 have jurisdiction. Mr. Hertzberg asked him. This is on page
7 63 of the transcript.

8 READING:

9 "MR. LAZIEST: I take it Your Honor is
10 denying our motion then on the basis of lack of
11 jurisdiction.

12 "THE COURT: I think that is what it comes
13 down to."

14 Judge Geernaert made no factual findings about any
15 of the issues that you're deciding here today.

16 THE COURT: He's not talking about factual findings.
17 He's saying look, there's a provision in the agreement that
18 says that the Court reserves power to enforce. The Court made
19 a jurisdictional determination but if you wanted to do
20 anything what you had to do was to bring an evidentiary
21 hearing on before Judge Geernaert. His accusation is not so
22 submerged. He's saying, well but you know he's judge-
23 shopping.

24 Judge Geernaert indicated some views in a very
25 preliminary sense about the agreement. Your client recognized
26 that your client was perhaps in an unfavorable environment and
27 decided, well look, let's just get out of Judge Geernaert's
28 court and see if we can find ourselves another judge.

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1 MR. WILSON: Your Honor, I will address that
2 argument. I misunderstood your question.

3 Judge Geernaert ruled that the Court had no
4 jurisdiction to enforce the agreement as a judicially ordered
5 settlement. It was not an order that we had no right to seek
6 for breach of contract a remedy including specific performance
7 which the agreement specifically provides for in paragraph --
8 I believe it's paragraph 20. I can give you the paragraph
9 reference to it if you like.

10 THE COURT: No, I'm familiar with the agreement.
11 Let's move on to another point. Mr. Greene makes the argument
12 that the liquidated damage provision constitutes an adequate
13 legal remedy. And he says the parties have in essence agreed
14 to that.

15 MR. WILSON: First, Your Honor, that provision, the
16 liquidated damages provision appears not in all the paragraphs
17 we're talking about. It appears in the paragraph -- I'll get
18 the --

19 THE COURT: Well, it's in paragraph no. 7-E.

20 MR. WILSON: It's in 7-E but it's not in G, and it's
21 not in the voluntary -- and so clearly it doesn't apply to the
22 paragraphs it's not in. Secondly, there's nothing that says we
23 can't seek liquidated damages for a prior breach while seeking
24 to enjoin a future breach. Specifically when you look at the
25 provisions of the paragraph which specifically give us the
26 right to injunctive relief.

27 (Pause)

28 MR. WILSON: For example, if you look at paragraph

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1 H, the agreement not to testify, et cetera and paragraph G,
2 the agreement not to voluntarily assist, those do not have
3 liquidated damages provisions in them. So you can't even make
4 the argument with respect to those paragraphs.

5 And the injunctive --

6 THE COURT: Mr. Greene makes the argument that -- go
7 ahead, what were you going to say about the injunctive
8 paragraph?

9 MR. GREENE: The injunctive paragraph is paragraph
10 20. It specifically says, "this agreement may be enforced by
11 any legal or equitable remedy including but not limited to
12 injunctive relief or declaratory judgment where appropriate."

13 THE COURT: Let's go to another point that I wanted
14 to ask you about. Mr. Greene makes the argument that there
15 has been protracted delay on the part of your client which he
16 says constitutes an indication that the gravity of the harm
17 that your client is complaining about is exaggerated in this
18 proceeding.

19 MR. WILSON: Your Honor, the -- that may be his
20 argument. His argument may also be latches. Whichever one it
21 is --

22 THE COURT: No, it's not latches. No, he was
23 scrupulous to avoid the point of latches. He recognizes, he
24 was very, very astute about it.

25 MR. WILSON: Okay, in that case the breeches
26 occurred, the first declarations were filed in July. And then
27 there was a declaration filed in September. This motion was
28 filed in October. And those are the facts. I don't believe

1 that that delay indicates that we didn't believe the harm was
2 sufficient to get injunctive relief. It takes a certain
3 amount of time to prepare papers. It's certainly not a
4 protracted delay. We're talking at the most between July 17th
5 and October -- it's what? Three months at the most.

6 THE COURT: He makes the point that there is no
7 morally defensible distinction between permitting compelled
8 testimony and the voluntary giving of declarations. He says
9 in both situations the ultimate result is either competent or
10 incompetent evidence before a finder of fact, usually a trial
11 court. He says for you to draw some kind of an artificial
12 distinction really is an indication first of all of moral
13 weakness in your client's position which ought to be reflected
14 in the outcome. And secondly, it's an indication that what
15 your client is doing is trying, to the extent possible, not to
16 distance itself from an adverse litigant, namely Armstrong but
17 to suppress and to contrive and to control information.

18 MR. WILSON: First, Your Honor, there is a
19 difference between a declaration which is crafted, in fact
20 drafted by Mr. Armstrong and testimony which appears as a
21 result of a deposition which is subject to cross examination.
22 Now I make a distinction between those two and I believe there
23 is a qualitative difference between those two.

24 Second, there's also the element of quote "backstage
25 help." In other words, it's not just the testimony, it's also
26 the cooperation. And there is a difference between that.

27 Finally, whatever Mr. Greene may feel about the
28 moral rightness or wrongness of it, I don't believe that's an

1 issue before this Court.

2 THE COURT: Well, pardon me, that moves into the
3 next point that he makes. He says, look, to be sure, the
4 litigants cite cases which have some kind of potential
5 pertinence to this case. They talk about public policy, they
6 talk about confidentiality. But in making that determination
7 as a practical matter, deciding rather than just talking, what
8 you have to do, his argument is, is weigh the weight of the
9 inhibition on communication.

10 When the inhibition on communication restricts
11 somebody from communicating about trade secrets you have one
12 kind of a situation. There the proprietor of the trade secret
13 has presumptively a very, very substantial right in preserving
14 confidentiality. This after all is information which is
15 almost in the nature of property; it's something which
16 presumptively is lawfully acquired; it is something that
17 presumptively furthers a very significant interest in our
18 society; the interest in conducting business in a certain way;
19 it's interest which -- it's information which was turned over
20 to the other person under conditions of secrecy; it's
21 information which is guarded and protected in a certain way,
22 kept confidential, and so forth.

23 So that when somebody says, look, you can restrict
24 somebody from disclosing trade secrets, Greene's point is
25 yeah, I'll go along with that, that's an easy case. But he
26 says in this case what you have is something different. Here
27 you have at best for your client warring constitutional
28 rights. And as Greene sees it, a constitutional right on the

1 part of Armstrong counterbalanced by no right of that gravity
2 on the part of your client, the plaintiff.

3 Moreover, he says the information that is being
4 suppressed in the trade secret case is information which the
5 trade secret proprietor owns, at least as the law
6 fictionalizes that construct. The information that's being
7 suppressed in this case, however, is information about
8 extremely blame-worthy behavior of the plaintiff which nobody
9 owns; it is information having to do with the behavior of a
10 high degree of offensiveness and behavior which is meritorious
11 in the extreme.

12 It involves abusing people who are weak. It
13 involves taking advantage of people who for one reason or
14 another get themselves enmeshed in this extremist view in a
15 way that makes them unable to resist it apparently. It
16 involves using techniques of coercion. His argument is, when
17 you now begin to balance so as to make a determination about
18 what has to go into the calculus that gives rise to a public
19 policy assessment, you've got to balance that.

20 MR. WILSON: Well Your Honor, first of all I didn't
21 say that the employment case was on all fours with this case.
22 Cases that we rely on that are close to this case are the ones
23 we've already discussed.

24 Second of all, there is a public policy at work
25 here. And that policy is settlement agreements. And Mr.
26 Heller's declaration is very clear about why this case was
27 settled the way it was. Mr. Armstrong was running around
28 giving declarations in his own litigation, previous litigation

1 and was essentially in the business of helping litigate
2 against the Church. And that's why these provisions are in
3 here. And there's a very strong public policy in favor of
4 settlement agreements as well.

5 Now, your point about somehow because Mr. Armstrong
6 says that the Church did all these heinous things and Judge
7 Breckenridge entered this decision -- by the way, in which by
8 the way he also said that Mr. Armstrong stole documents and
9 then said Mr. Armstrong was privileged because he could
10 protect himself.

11 THE COURT: Now the two of you represent your
12 clients. But you don't have to answer for their apparent
13 conduct.

14 MR. WILSON: But --

15 THE COURT: There appears to be in the history of
16 their behavior a very, very substantial deviation between
17 their conduct and standards of ordinary, courteous conduct and
18 standards of ordinary, honest behavior. They're just way off
19 in a different firmament.

20 MR. WILSON: Well Your Honor --

21 THE COURT: They're the kind of -- it's the kind of
22 behavior which makes you sort of be sure you cut the deck and
23 be sure you've counted all the cards. If you're having a
24 friendly poker game you'd make sure to count all the chips
25 before you dealt any cards.

26 MR. WILSON: Your Honor, I'm troubled by even
27 dealing with this. And the reason I'm troubled with it is I
28 don't believe it's relevant to this. Because what that says

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1 is Mr. Armstrong or anybody can come into court and say, about
2 any organization, this is a bad organization. I say it's bad
3 and here is -- and you saw what they tried to file.

4 THE COURT: Let's assume that this is the agreement.
5 Let's assume that the agreement was with me and let's assume
6 that what I knew about was criminal behavior on your part.
7 And you said, Judge look, you know that I've been stealing
8 money and you know that I've been molesting young girls and
9 you know that I've been engaging in other criminal behavior;
10 don't tell anybody about it, I'll give you some money for it.
11 Now obviously if you're subpoenaed we understand that, you're
12 going to have to testify. But just don't tell anybody.
13 That's one kind of case.

14 The other kind of case is a case in which I go to
15 work for you and I'm mowing your lawn and I just happen to
16 look through your window and I notice that you're in a
17 compromising position with a woman whom you're not married to.
18 And you say, oh for heaven's sake judge, don't tell my wife.
19 I'll tell you what. I'll send you a case of Scotch if you
20 just don't tell her. That's another kind of case.

21 Greene's point is that the case that you're arguing
22 is the first case.

23 MR. WILSON: Well Your Honor, I disagree with that
24 because there's no conduct that is alleged that's -- that I
25 see that's criminal. What we have is a lot of -- and whatever
26 -- and if it is, it's a bare allegation. It's -- and I go
27 back to what I was saying and I apologize for -- for
28 interrupting you. That you come -- they come into court and

1 file stuff this high full of everything bad that they can ever
2 think of that anybody ever wrote or said about Scientology.
3 And the purpose of doing that is to poison the record, the
4 poison the mind of anybody making any decision into saying
5 this is a bad organization. And because it's a bad
6 organization --

7 THE COURT: That might be their purpose
8 subjectively. My purpose in dealing with the evidence has
9 nothing to do with that. My purpose in dealing with the
10 evidence is to deal with precisely the point that I posited to
11 you. Which is, whether one, in making a determination about
12 the extent and contour of the public policy associated with
13 suppressing behavior on the part of Armstrong has to look to
14 the content of what Armstrong might say if he were not
15 suppressed. It's the two cases I gave you. It's the you-and-
16 the-woman-not-your-wife case versus the you-and-the-crime
17 case.

18 MR. WILSON: Well Your Honor, first of all, if your
19 example is you're a judge and I'm an attorney, then clearly
20 that's a different case because you would have a duty, I
21 believe, if you knew I was engaged in criminal conduct.

22 THE COURT: No, I'm just a man over there mowing
23 your lawn. I just happen --

24 MR. WILSON: That --

25 THE COURT: -- to know two things. You refer to me,
26 pardon me, you refer to me by the name "judge" in the same way
27 you'd refer to the actor Judge Rienhold by the name "judge"
28 because that happens to be my first name in this particular

1 anecdote. Go ahead.

2 MR. WILSON: Your Honor, I don't think that's this
3 case and I haven't -- I haven't looked at that question.

4 THE COURT: Look at it now. That's the argument.
5 That is a point of significant moral impact that emerges from
6 the evidence.

7 MR. WILSON: I think that in that case, if there is
8 a legal conduct, if it's clear that what I'm doing is paying
9 you not to disclose illegal conduct that are crimes, that
10 contract is the litigant's public policy. But that's not this
11 case.

12 THE COURT: Why?

13 MR. WILSON: Because the only thing that Mr.
14 Armstrong is saying -- he's not saying, look, my contract was
15 -- was to not disclose illegal conduct. The contract that Mr.
16 Armstrong entered into was not to disclose certain experiences
17 that he'd had, not to assist people adverse to Scientology in
18 litigation. The only way that you get there is by, is first
19 by finding that at the time the contract was entered into
20 Armstrong had knowledge of illegal conduct and specifically
21 this agreement was entered into to prevent him from disclosing
22 it.

23 Now two things. There's two problems with that.
24 One, there's no evidence that at the time this agreement was
25 entered into Armstrong had knowledge of illegal conduct that
26 the agreement was entered into to prevent from disclosing.
27 Number two, the agreement allows him to testify pursuant to
28 subpoena.

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1 (Pause)

2 MR. WILSON: And there's nothing in the agreement
3 that says Armstrong cannot report crimes to authorities. That
4 would be, I believe, a violation of public policy.

5 THE COURT: Well, let's examine that. Take a look
6 at Section -- I think it's 7-C, Mr. Wilson. Yes, it's 7-C.
7 It's on page no. 6.

8 MR. WILSON: I have it.

9 THE COURT: You see that there's a reference there
10 to governmental entity. That has to do with the attorney fee?

11 MR. WILSON: Right.

12 THE COURT: Okay. Now go to 7-G. This is on page
13 no. 10. That refers to any person adverse to Scientology.
14 Are you with me so far?

15 MR. WILSON: 7-G?

16 THE COURT: Yes.

17 MR. WILSON: Yes.

18 THE COURT: Then go to 7-H.

19 MR. WILSON: Yes. I'm there.

20 THE COURT: Does that carve out an exception for
21 governments?

22 MR. WILSON: No.

23 THE COURT: Does it include governments in the
24 inhibition? In other words, is that a group of persons whom
25 you would be restricted from communicating with?

26 MR. WILSON: It would depend if they were -- if they
27 had an adverse interest and --

28 THE COURT: Well, they're going to have an adverse

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1 interest. Let's just say that the government is somebody
2 who's going to come in and prosecute your client or one of the
3 people mentioned in what I'll call paragraph 1 of the --

4 MR. WILSON: Then Mr. Armstrong --

5 THE COURT: -- the protected people.

6 MR. WILSON: Then Mr. Armstrong cannot voluntarily
7 cooperate with them.

8 THE COURT: Well, then that gets you into the jam
9 that you were trying to get out of, doesn't it?

10 MR. WILSON: No, it doesn't.

11 THE COURT: When you said look, this doesn't
12 restrict him from making reports to, you said, the
13 authorities. But it does restrict him from making reports to
14 the authorities now, according to your --

15 MR. WILSON: What I --

16 THE COURT: I at Wilson at 1135 is of the view that
17 it doesn't restrict him from making reports to the authorities
18 but Wilson 1140 is of the opinion that it does.

19 MR. WILSON: Your Honor, I stand corrected. You're
20 correct on that.

21 THE COURT: So that means that that can't enforced,
22 right?

23 MR. WILSON: No, it can --

24 THE COURT: What does it mean?

25 MR. WILSON: -- be enforced because at the time it
26 was entered into there's not evidence that Mr. Armstrong knew
27 about crimes and that this was designed to prevent him from
28 testifying or --

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1 THE COURT: So you're saying --

2 MR. WILSON: -- giving evidence about crimes.

3 THE COURT: So you're saying that factually this is
4 the -- this is Wilson with the woman-not-his-wife case. Or at
5 least that's the factual record that's been made out so far in
6 weighing these equities.

7 MR. WILSON: Yes.

8 THE COURT: What about the interpretational or
9 constructional problems that Mr. Greene talked about? Who is
10 quote "adverse" end quote to Scientology --

11 MR. WILSON: Well.

12 THE COURT: -- and what are Armstrong's experiences?
13 What is it that he's supposed to say or not say?

14 MR. WILSON: Well, Your Honor, the point about
15 whether Mr. Armstrong --

16 THE COURT: Let's just assume for a moment, just to
17 give you an example, that I am -- I'm Cardinal Manning.
18 Armstrong shows up one day and he says, oh it's good to see
19 you, Cardinal. And I say, hello Mr. Armstrong, how are you
20 doing? And do whatever cardinals do when they meet people had
21 wish him well and so forth. And during the course of that he
22 says, you know, I was involved once in a religion and I say,
23 you know, one of the precepts of the religion that i belong to
24 and that I'm a functionary in is that the church that I'm a
25 member of is the only true church. Am I adverse now?

26 MR. WILSON: The cardinal said that or Armstrong
27 said it? I lost you.

28 THE COURT: The cardinal said it.

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1 MR. WILSON: The cardinal said it.

2 THE COURT: And besides you know the position that
3 different religious groups take anyway. Let's say --

4 MR. WILSON: No, I don't think -- I don't think that
5 makes --

6 THE COURT: Let's say that I'm an imam in Teheran,
7 I'm a Muslim. My view is that --

8 MR. WILSON: I don't -- I don't think that that
9 makes you adverse to Scientology.

10 THE COURT: So you think "adverse" means --

11 MR. WILSON: It means --

12 THE COURT: -- what? What is the -- the words
13 "adverse to" if taken at their -- well, let me just step back
14 and tell you. There is an inescapable quality of perceived
15 persecution throughout this case. I mean just everybody feels
16 they're being persecuted by everybody else.

17 MR. WILSON: That's true.

18 THE COURT: And your client or its predecessors or
19 organizations that are related to it apparently set up
20 elaborate mechanisms to deal with real or imagined
21 persecutions. In effect persecuting the alleged persecutor.
22 In that climate who is adverse --

23 MR. WILSON: Well, Your Honor --

24 THE COURT: -- to the people referred to in the
25 agreement of December 1986, Section 1.

26 MR. WILSON: To me this means an adverse party in
27 some kind of proceeding. That's what it means to me. And I
28 think that if there's a problem with the language --

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1 THE COURT: So should it be restricted then to
2 litigants only?

3 MR. WILSON: Well, I think that the order which does
4 not have to track exactly the language of the agreement -- I
5 mean, there is a difference between an agreement and an order
6 compelling performance. The order can be drafted to apply to
7 litigants, adverse litigants or parties adverse to Scientology
8 in arbitrations or other quasi-litigation proceedings. That's
9 what it's about.

10 THE COURT: What are the defendant's experiences?

11 MR. WILSON: That is -- that really means what
12 happened to him while he was in Scientology.

13 THE COURT: So how about the problem that --

14 MR. WILSON: That doesn't mean --

15 THE COURT: -- Mr. Greene talks about? He says,
16 I've got a belly-ache and he goes to somebody and they say, we
17 understand your belly hurts, Armstrong; your problem is not
18 your belly, your problem is in your head. And so he says, all
19 right fine, I better go somewhere and get that dealt with.
20 And he goes somewhere and somebody says, well what's up? How
21 do you feel? And he says, oh I feel pretty rotten. I feel --
22 and then he describes any number of subjective and emotional
23 symptoms. And the person interrogating him says, well where
24 do you get these ideas? And what does he do? Does he sort of
25 sit there or he says just a second, I have to review this
26 agreement?

27 MR. WILSON: You're asking me, is that an experience
28 in Scientology?

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1 THE COURT: That's right.

2 MR. WILSON: Well, if it's an experience in
3 Scientology and he's talking to someone like a psychiatrist or
4 a priest, the various privileges would apply and the agreement
5 wouldn't apply to those.

6 THE COURT: Where do you get that out of the
7 agreement?

8 MR. WILSON: The agreement doesn't specifically say
9 it but those are privileged. We couldn't enforce the
10 agreement in those contexts and wouldn't try to, and are not
11 trying to now. I think you have to look at what we're trying
12 to enforce. And I -- I recognize that Your Honor has a very
13 good understanding of the record and what's going on here, and
14 also that it's very -- you can think of hypotheticals to take
15 things to an extreme, as I said earlier, where an agreement,
16 yes, you could construe it to apply to that.

17 It's possible to say, yes this agreement would apply
18 to that. We don't intend to apply to it. We would believe
19 that's a privileged communication and we couldn't enforce it.

20 (Pause)

21 THE COURT: Go right ahead with your agreement. It
22 will conclude in about a minute or two.

23 MR. WILSON: I --

24 THE COURT: Those are the questions I have for you.

25 MR. WILSON: Those are the questions? Then I only
26 have one further comment and that has to do with the questions
27 that you were asking Mr. Greene about whether you have to find
28 -- excuse me, the damages remedy inadequate.

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1 We're entitled to the injunction under 526(1), (2),
2 (3), (4), (5), and (6). And those are not all combined. You
3 don't have to find every single one of those. Just one. So
4 -- and just briefly, one is where it appears by the complaint
5 the plaintiff is entitled to the relief, and the relief
6 includes the injunction. I think we're entitled to that here.
7 We've shown the breeches. The agreement allows us to get an
8 injunction.

9 Two, which talks about irreparable injury and four,
10 which talks about when the pecuniary compensation would not
11 afford relief, and five, where it would be difficult to
12 ascertain the amount of compensation are pretty much
13 considered together. In other words, you really can't
14 consider those separate because usually where you've got one,
15 you've got more. And where you don't have them, you don't
16 have any of them. And here we have them. Because the
17 reputation damages that could occur from Mr. Armstrong
18 disclosing would be irreparable injury. They'd also be very
19 hard to ascertain damages for. And that's why the damages
20 relief wouldn't be appropriate.

21 And so for those reasons all three of those are
22 appropriate. And six, where the restraint is necessary to
23 permit -- to prevent a multiplicity of litigation, that's also
24 present. Because what's going to happen here if Armstrong
25 isn't restrained, we have a suit against him, that suit goes
26 to trial, we amend the complaint as of the date of trial to
27 include all the breeches, we either win or lose. It keeps on
28 going. We've got to sue him again.

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1 THE COURT: But you're going to go to trial, are you
2 not?

3 MR. WILSON: Absolutely.

4 THE COURT: All right. The matter stands submitted,
5 counsel. I'll advise you of my decision. I'll do it in
6 writing and I'll try to do it within the next day or two;
7 something like that. As rapidly as I can. I recognize my
8 legal obligations for a prompt decision but I'll vastly exceed
9 those. I mean, I'll vastly excel over those. I'm not going
10 to take anything like ninety days to decide this case. I'll
11 probably decide it in ninety hours.

12 Thank you very much.

13 MR. GREENE: Thank you, Your Honor.

14 MR. WILSON: And Your Honor, thank you for your
15 patience in listening to us.

16 THE COURT: It's all right. No, happy to do it.

17 PROCEEDINGS CONCLUDED AT 11:50 A.M.

18 (Court Is Adjourned)

19 * * * * *

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

PARRIS TRANSCRIPTION
P.O. BOX 41754
LOS ANGELES, CA 90041-9998
(213) 254-4157

GAIL I. PARRIS
OWNER

Gail I. Parris
SIGNATURE OF TRANSCRIBER

7-10-92
DATE

001713

RECEIVED

MAY 30 1992

DEPT. 88

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992

Honorable Ronald M. Sohigian, Judge
1

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.

Counsel For
Plaintiff

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

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SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992

Honorable Ronald M. Sohigian, Judge
1aM. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.Counsel For
Plaintiff

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

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SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992

Honorable Ronald M. Sohigian, Judge
1bM. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.Counsel For
Plaintiff

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of \$70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

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SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992

Honorable Ronald M. Sohigian, Judge
lcM. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.Counsel For
Plaintiff

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

RONALD M. SOHIGIAN
Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.

001717

1 Andrew H. Wilson
2 WILSON, RYAN & CAMPILONGO
3 235 Montgomery Street
4 Suite 450
5 San Francisco, California 94104
6 (415) 391-3900

7 Laurie J. Bartilson
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13 Attorneys for Plaintiff
14 CHURCH OF SCIENTOLOGY INTERNATIONAL

RECEIVED
JUN 08 1992
HUB LAW OFFICES

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 CHURCH OF SCIENTOLOGY)	Case No. BC 052395
18 INTERNATIONAL, a California)	
19 not-for-profit religious)	NOTICE OF RULING
20 corporation;)	
21)	
22 Plaintiff,)	
23)	
24 vs.)	
25)	
26 GERALD ARMSTRONG; DOES 1)	
27 through 25, inclusive,)	
28)	
29 Defendants.)	
30)	

31 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

32 PLEASE TAKE NOTICE that on May 28, 1992, the Honorable
33 Ronald M. Sohigian, Judge of the Los Angeles Superior Court,
34 entered an Order granting in part plaintiff's motion for
35 preliminary injunction. A true and correct copy of the order so
36 entered is attached hereto as Exhibit A.

37 PLEASE TAKE FURTHER NOTICE that plaintiff has posted the
38 undertaking referred to in paragraph 7 of the Order, evidence of

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1 which is attached hereto as Exhibit B.

2 DATED: June 5, 1992

Respectfully submitted,

3 Andrew H. Wilson
4 WILSON, RYAN & CAMPILONGO

5 BOWLES & MOXON

6 By: 
7 Laurie J. Bartilson

8 Attorneys for Plaintiff
9 CHURCH OF SCIENTOLOGY
10 INTERNATIONAL

11

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28

CASE NO. BC 052395

SUPERIOR COURT Filing Finance
DEPARTMENT

RECEIVED FROM Bowler, Moxon

MISCELLANEOUS RECEIPT

SUPERIOR COURT
LOS ANGELES COUNTY
CALIFORNIA

CUSTOMER'S RECEIPT

M 087505

DATE 6/5/92

INDICATE WHICH EVER APPLIES

ATTY. FOR ☐ PLTF ☐ DEPT ☐

\$ 70,000.00

FOR Seventy Thousand only
Dep. per minute order Filed 5/28/92
Undertaking DOLLARS

Church of Scientology
VS

Gerald Armstrong et al.
DEFENDANT

CASH less CHECK 097688 MAIL #

Bejs
DEPUTY

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, CA 90028.

On June 5, 1992, I served the foregoing document described as NOTICE OF RULING on interested parties in this action as follows:

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Paul Morantz BY U.S. MAIL
P.O. Box 511
Pacific Palisades, CA 90272

[X] BY MAIL

[X] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on June 5, 1992 at Los Angeles, California.

[] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressee.

001722

Executed on June 5, 1992 at Los Angeles, California.

☒ (State) I declare under penalty of the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie Bartilson

Samuel J. Felt
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 235 Montgomery Street, Suite 450, San Francisco, CA 94104.

On June 5, 1992, I served the foregoing document described as NOTICE OF RULING on interested parties in this action as follows:

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Ford Greene BY U.S. MAIL
Hub Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

[X] BY MAIL

[X] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on June 5, 1992 at Los Angeles, California.

[] **(BY PERSONAL SERVICE) I delivered such

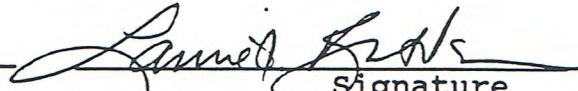
001724

envelopes by hand to the offices of the addressee.

☒ (State) I declare under penalty of the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Baribor


Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, CA 90028.

On June 5, 1992, I served the foregoing document described as NOTICE OF RULING on interested parties in this action as follows:

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Graham Berry BY U.S. MAIL
Lewis, D'Amato, Brisbois & Bisgaard
221 N. Figueroa St. Suite 1200
Los Angeles, CA 90012

[x] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on June 5, 1992 at Los Angeles, California.

[] **(BY PERSONAL SERVICE) I delivered such

001726

envelopes by hand to the offices of the addressee.

Executed on June 5, 1992 at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Batis


Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

RECEIVED

AUG 01 1992

HUB LAW OFFICES

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272
(213) 459-4745

Attorneys for Defendant
GERALD ARMSTRONG

ORIGINAL FILED

JUL 30 1992 *Cep*
LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1
through 25, inclusive,

Defendants.

No. BC 052395

NOTICE OF APPEAL
[C.C.P. § 904.1]

FEE RECEIVED
Chm 7/22/92

TO: ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD.

PLEASE TAKE NOTICE that Defendant and Appellant Gerald
Armstrong hereby appeals to the Court of Appeal of the State of
California, Second Appellate District, from the grant Preliminary
Injunction entered on May 28, 1992, in Department 88 of the above-
entitled court.

///

001728

COPY

1 Notice of Entry of Judgment was served by Defendant and
2 Respoondent of June 5, 1992.

3 DATED: July 23, 1992

HUB LAW OFFICES

4
5 By: 

FORD GREENE

6 Attorney for Defendant and
7 Appellant

8 GERALD ARMSTRONG
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Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

Graham E. Berry, Esquire
LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 North Figueroa Street. Suite 1200
Los Angeles, California 90012

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

DATED: July 23, 1992

992

A large, stylized handwritten signature in black ink, featuring multiple loops and a long horizontal stroke extending to the right. The signature is written over a horizontal line.

HUB LAW OFFICES
Ford Greene, Esquire
1 Sir Francis Drake Blvd.
San Anselmo, CA 94960
(415) 258-0260

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272
(213) 459-4745

Attorneys for Defendant
GERALD ARMSTRONG

RECEIVED

AUG 06 1992

HUB LAW OFFICES

CLERK'S OFFICE
COURT OF APPEAL - SECOND DIST.
RECEIVED

AUG - 3 1992

JOSEPH A. LANE

Clerk

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION _____

CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
not-for-profit religious)
corporation;)

Plaintiffs,)

vs.)

GERALD ARMSTRONG; DOES 1)
through 25, inclusive,)

Defendants.)

No. BC 052395

NOTICE OF PRIOR RELATED APPEAL
DECLARATION OF FORD GREENE

TO: ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD.

PLEASE TAKE NOTICE that Defendant and Appellant Gerald
Armstrong hereby gives notice that WITH RESPECT to the instant
appeal, there exists a prior related appeal. The prior related
appeal is as follows: Church of Scientology v. Gerald Armstrong,
Court of Appeal, Second District, Division Three (1991) Nos.
B025920, B038975 reported at 232 Cal.App.3d 1060.

001731

COPY

1 DATED: July 29, 1992

HUB LAW OFFICES

2
3 By: 

FORD GREENE

Attorney for Defendant and
Appellant

GERALD ARMSTRONG

001732

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California and am the attorney of record for GERALD ARMSTRONG, appellant herein.

2. The instant appeal arises from the grant of an injunction by the Honorable Ronald M. Sohigian, Department 88, Los Angeles Superior Court, on May 28, 1992. Said injunction re-wrote and enforced certain provisions of a settlement agreement between Armstrong and the Scientology Organization. The settlement agreement required Armstrong not to testify against Scientology unless he was subpoenaed and to avoid the service of any subpoena which would compel him to testify.

3. In Church of Scientology v. Gerald Armstrong, Court of Appeal, Second District, Division Three (1991) Nos. B025920, B038975 reported at 232 Cal.App.3d 1060, this court stated:

Armstrong, who did not participate in the hearing on the motion below, has filed a brief claiming the record should be unsealed because the Church has failed to comply with the terms of its settlement agreement with him. His declarations to the latter effect are not properly before us on appeal, as they were not considered by the trial court. We therefore consider neither the meaning of the portions of the settlement agreement to which he refers nor the question whether the Church has complied therewith.

232 Cal.App.3d at 1070, fn. 5.

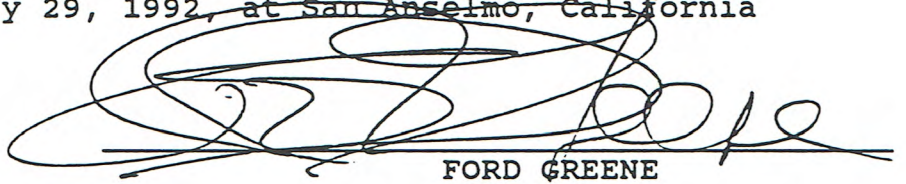
4. Now, Armstrong's declarations regarding the settlement agreement are properly before this Court,

5. In the interest of judicial economy, the herein appeal should be referred to the same appellate panel that is already familiar with the history of this case.

001733

1 Under penalty of perjury pursuant to the laws of the State of
2 California I hereby declare that the foregoing is true and correct
3 according to my first-hand knowledge, except those matters stated
4 to be on information and belief, and as to those matters, I
5 believe them to be true.

6 Executed on July 29, 1992, at San Anselmo, California

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8
9 FORD GREENE

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: NOTICE OF PRIOR RELATED APPEAL on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

Graham E. Berry, Esquire
LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 North Figueroa Street. Suite 1200
Los Angeles, California 90012


LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

COUNTY CLERK
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, California

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: July 21, 1992



001735

1 HUB LAW OFFICES
Ford Greene, Esquire
2 California State Bar No. 107601
711 Sir Francis Drake Boulevard
3 San Anselmo, California 94960-1949
Telephone: (415) 258-0360

4 PAUL MORANTZ, ESQ.
5 P.O. Box 511
Pacific Palisades, CA 90272
6 (213) 459-4745

7 Attorneys for Defendant
GERALD ARMSTRONG

ORIGINAL FILED

AUG 05 1992
LOS ANGELES
SUPERIOR COURT

RECEIVED

AUG 10 1992

HUB LAW OFFICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF LOS ANGELES

13 CHURCH OF SCIENTOLOGY)
14 INTERNATIONAL, a California)
not-for-profit religious)
15 corporation;)

16 Plaintiffs,)

17 vs.)

18 GERALD ARMSTRONG; DOES 1)
19 through 25, inclusive,)

20 Defendants.)
21

No. BC 052395

NOTICE OF ELECTION TO
PROCEED UNDER CALIFORNIA
RULES OF COURT, RULE 5.1

22 TO: ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD.

23 PLEASE TAKE NOTICE that Defendant and Appellant Gerald
24 Armstrong in connection with the notice of appeal filed in this
25 action on or about July 24, 1992, Moving Party and Appellant
26 GERALD ARMSTRONG hereby elects to proceed under the provisions of
27 California Rules of Court, Rule 5.1, so that a joint appendix or
28 individual appendices will be submitted in lieu of a clerk's

001736

REC'D ROOM 111

AUG 05 1992

APPEAL/TRANSCRIPTS

COPY

transcript.

DATED: July 31, 1992

HUB LAW OFFICES

By:

FORD GREENE

Attorney for Defendant and
Appellant

GERALD ARMSTRONG

001737

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: NOTICE OF ELECTION TO PROCEED UNDER CALIFORNIA RULES OF COURT, RULE 5.1 on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

Laurie J. Bartilson, Esq.
Bowles & Moxon
6255 Sunset Boulevard,
Suite 2000
Los Angeles, California 90028

Graham E. Berry, Esquire
LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 North Figueroa Street. Suite 1200
Los Angeles, California 90012

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

COURT OF APPEAL OF CALIFORNIA
Second Appellate District
300 South Spring St., Fl. 2
North Tower
Los Angeles, California 90013

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: July 21, 1992

Karl D. Seidel

001738

1 HUB LAW OFFICES
2 Ford Greene, Esquire
3 California State Bar No. 107601
4 711 Sir Francis Drake Boulevard
5 San Anselmo, California 94960-1949
6 Telephone: (415) 258-0360

7 PAUL MORANTZ, ESQ.
8 P.O. Box 511
9 Pacific Palisades, CA 90272
10 (213) 459-4745

11 Attorneys for Defendant
12 GERALD ARMSTRONG

ORIGINAL FILED
AUG 05 1992
LOS ANGELES
SUPERIOR COURT

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF LOS ANGELES

RECEIVED

AUG 10 1992

15 CHURCH OF SCIENTOLOGY)
16 INTERNATIONAL, a California)
17 not-for-profit religious)
18 corporation;)

No. BC 052395

HUB LAW OFFICES

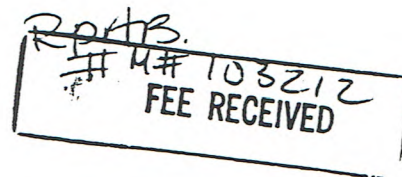
NOTICE TO PREPARE REPORTER'S
TRANSCRIPT

19 Plaintiffs,

20 vs.

21 GERALD ARMSTRONG; DOES 1
22 through 25, inclusive,

23 Defendants.



24 TO: ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD AND
25 TO THE COURT REPORTER OF THE SUPERIOR COURT:

26 PLEASE TAKE NOTICE that Defendant and Appellant Gerald
27 Armstrong desires the preparation of a Reporter's Transcript of
28 the following proceedings:

1. The evidentiary phase of the hearing on plaintiff's
motion for a preliminary injunction held before the Honorable

001739

1 Ronald M. Sohigian, Department 88, on May 26, 1992.

2 2. The oral argument phase of the hearing on plaintiff's
3 motion for a preliminary injunction held before the Honorable
4 Ronald M. Sohigian, Department 88, on May 27, 1992 (this
5 transcript has been previously prepared).

6 DATED: July 31, 1992

HUB LAW OFFICES

7
8 BY: 

FORD GREENE

Attorney for Defendant and
Appellant

GERALD ARMSTRONG

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Andrew H. Wilson WILSON, RYAN & CAMPILONGO 235 Montgomery Street, Suite 450 San Francisco, California 94104	Laurie J. Bartilson, Esq. Bowles & Moxon 6255 Sunset Boulevard, Suite 2000 Los Angeles, California 90028
Graham E. Berry, Esquire LEWIS, D'AMATO, BRISBOIS & BISGAARD 221 North Figueroa Street. Suite 1200 Los Angeles, California 90012	GAIL PARRIS 1675 Kaweah Drive Pasadena, California 91105
PAUL MORANTZ, ESQ. P.O. Box 511 Pacific Palisades, CA 90272	COURT OF APPEAL OF CALIFORNIA Second Appellate District 300 South Spring St., Fl. 2 North Tower Los Angeles, California 90013

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

✓ *

Karl W. Leidel

001741

SEP 24 1992

N/A 7-30-92

(5.1)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

HUB LAW OFFICES

NAME AND ADDRESS OF SENDER JAMES H. DEMPSEY County Clerk/Executive Officer of the Superior Court 111 North Hill Street, Room 111, APPEAL TRANSCRIPT UNIT Los Angeles, California 90012		TELEPHONE NO (213) 974-5237	FOR COURT USE ONLY ORIGINAL FILED SEP 18 1992 LOS ANGELES SUPERIOR COURT CASE NUMBER BC 52395
PLAINTIFF: CHURCH OF SCIENTOLOGY INTERNATIONAL, DEFENDANT: GERALD ARMSTRONG:			
NOTICE TO REPORTERS/MONITORS TO PREPARE TRANSCRIPT ON APPEAL			

On 8-5-92, Appellant/Cross Appellant/Respondent filed a Request for Reporter's Transcript, pursuant to Rule 4 (a), Rules of Court, in connection with the pending appeal to the Court of Appeal, a copy of which is attached for your information.

The proceedings requested to be transcribed are as follows:

Date of Hearing	Department Where Heard	Name of reporter/monitor
<u>5-26-92</u>	<u>88</u>	<u>J. CRUSE (E.R.M.)</u>
<u>5-27-92</u>	<u>88</u>	<u>J. CRUSE (E.R.M.)</u>

Copy of this notice, with attachment, transmitted to the above-named reporter(s)/monitor(s) on this date by delivery thereof to the Court Reporter's Assignment Office, Room 216 and/or the Electronic Recording Monitor's Office, Room 226A of the Courthouse at 111 North Hill Street, Los Angeles, CA 90012.

Received By _____ Dated JAMES H. DEMPSEY

County Clerk/Executive Officer of the Superior Court of California, County of Los Angeles.

001742

Dated: SEPTEMBER 18, 19 92

By M.L. Moreno, Deputy

M.L. MORENO

LOS ANGELES COUNTY CLERK AND EXECUTIVE OFFICER OF THE SUPERIOR COURT

MEMORANDUM

Date _____

TO: Burdette Harris, Director of Court Reporters ~~REDACTED~~

FROM: Joe Fabrizio Head Court Services

SUBJECT: REQUEST FOR STATUS REPORT RE REPORTER'S/MONITOR'S TRANSCRIPTS ON APPEAL .

Our records indicate the reporter's/monitor's transcript is due on the following case. Please provide information regarding the status of the reporter's transcripts.

CASE NUMBER: BC 52395

CASE TITLE: CHURCH OF SCIENTOLOGY INTERNATIONAL

Reporter(s)/Monitor(s):

Department:

J. CRUSE (.E.R.M.)

88

J. CRUSE (E.R.M.)

88

1. ☐ Appellant notified of estimate by reporter/monitor on _____.
2. ☐ Deposit received on _____. (If received more than 30 days ago complete item 5. below)
3. ☐ Transcripts in process of completion. Estimated date of completion is _____.
4. ☐ No deposit has been received by the reporter/monitor for transcript preparation and the time has expired. Declaration of non-receipt of fees submitted for processing with this request.
5. ☐ Time for the reporter/monitor to process the transcript has been extended to _____ ; copy of order attached. (California Court Rule 4(d).]
6. ☐ Reporter's/Monitor's transcript was requested but no reporter/monitor was present at hearing; declaration to said effect is being submitted for processing with this request.
7. ☐ The primary reporter/monitor is (when more than one reporter/monitor):

J. CRUSE (E.R.M.) ; CSR # 00000

DATED: _____ SIGNED _____

(PLEASE RETURN THIS FORM TO THE TRANSCRIPT UNIT ROOM 111 WITHIN 10 WORKING DAYS)

SENT BY: _____

Transcript Clerk

001743